

1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF TENNESSEE
3 NASHVILLE DIVISION

FILED
U.S. DISTRICT COURT
MIDDLE DISTRICT OF TENN.
MAR 02 1998
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DEPUTY CLERK

4 ABU-ALI ABDUR' RAHMAN, .

5 Plaintiff, .

6 vs. .

7 RICKY BELL, .

8 Defendant. .
9

Civil Case # 3-96-0380
Beginning February 6, 1998

CLERK'S COPY

10 TRANSCRIPT OF HEARING
11 BEFORE THE HONORABLE TODD J. CAMPBELL
12
13

14 APPEARANCES:

15 For the Plaintiff:

Bradley A. MacLean &
William P. Redick, Jr.
Attorneys at Law
Nashville, TN

18 For the Defendant:

John H. Baker, III &
Don Ungurait
Asst. Attorneys General
Nashville, TN

24 Official Court Reporter:

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1 February 10, 1998.

2 THE COURT: Ready to start?

3 MR. MACLEAN: Yes, Your Honor.

4 THE COURT: Anything we need to take
5 up?

6 MR. MACLEAN: As a preliminary matter, I
7 would like to introduce in evidence the deposition we
8 took by telephone of Elmer M. Bishop and deposition by
9 telephone of William Delagrangé.

10 I propose we make the Elmer Bishop
11 deposition Exhibit 135 and the Delagrangé deposition
12 Exhibit Number 136.

13 THE COURT: All right. I have copies
14 here. Do you have copies?

15 MR. MACLEAN: Yes. I have the uncondensed
16 copies. I don't know which you would prefer to read.

17 THE COURT: I prefer big type.

18 MR. MACLEAN: That is what I just gave
19 her.

20 THE COURT: I am sorry. Those numbers are
21 what?

22 MR. MACLEAN: Bishop is 135 and the
23 Delagrangé deposition is 136.

24 THE COURT: Those will be admitted.

25 MR. MACLEAN: As a preliminary matter, the

1 state or respondent has filed an objection to the use of
2 expert reports and this is not a major issue one way or
3 the other, but I think would be helpful to have a ruling
4 at the beginning so we know whether we are going to use
5 them or not, or how we might use them. I would request a
6 ruling on those.

7 THE COURT: Well, the Sixth Circuit
8 case -- I will spell this -- E-n-g-e-b-r-e-t-s-e-n versus
9 Fairchild. Mr. Baker have you read that case.

10 MR. BAKER: No, Your Honor, I have not.

11 THE COURT: Mr. MacLean, do you want to
12 say anything about it?

13 MR. MACLEAN: Well, it is not a major
14 issue one way or the other but I want a ruling to know
15 how to proceed with the witness.

16 It is my understanding from that case --
17 first of all it was a jury case. This is a bench trial.
18 The case generally stands for the proposition that in a
19 jury proceeding you do not show the expert report to the
20 jury unless on cross-examination or on rebuttal reference
21 is made to that report and then under the rule of
22 completeness you are entitled to put the report in to
23 evidence.

24 Their expert commented on our experts'
25 reports. I am sure there will be some reference to the

1 reports. If there is not, that is fine. But I also
2 think in light of the fact this is a bench trial, not a
3 jury trial, Your Honor may want the benefit of the
4 reports. It just may be more discretionary.

5 It is discretionary with the Court and
6 what you would like to do.

7 THE COURT: Mr. Baker.

8 MR. BAKER: Our basic objection is we
9 believe the best evidence of what the experts have to say
10 should be subject to cross-examination on the stand and
11 live for the judge to hear. That is the reason that I
12 objected on the hearsay grounds, a hearsay document. We
13 believe it is best to hear from the witnesses.

14 THE COURT: Are you planning on
15 cross-examining this witness with his report?

16 MR. BAKER: Yes, Your Honor, I will make
17 reference to the report. I realize that can open the
18 door to an admission of the report.

19 At least as an initial matter, we would
20 object on the hearsay.

21 THE COURT: The report itself is an out of
22 court statement to be offered for the truth. That is
23 hearsay. I am not aware of any exception that would
24 allow the expert report to come in under those
25 circumstances.

1 So, in terms of direct testimony the
2 report itself is not to be admitted.

3 The witness can testify about his opinion
4 and the basis of his opinion and he is free to refresh
5 his recollection with the report.

6 If Mr. Baker cross-examines the witness
7 about the report then if there is discussion about what
8 is in the report and what is not in it, the report will
9 be marked as an exhibit and admitted into evidence.

10 MR. REDICK: Thank you,

11 MR. MACLEAN: Thank you, Your Honor. At
12 this time I would like to the call to the stand Dr.
13 Robert Sadoff.

14 (Whereupon, the witness was duly sworn.)
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EXAMINATION OF ROBERT SADOFF

BY MR. MACLEAN:

Q. You are Robert Sadoff, Dr. Sadoff, is that right?

A. That's correct.

Q. You are a medical doctor?

A. Yes, sir.

Q. A psychiatrist?

A. Yes, sir.

Q. You are from Jenkintown, Pennsylvania?

A. That's correct.

Q. I believe you are 62 years old as of Sunday?

A. As of Sunday, yes.

Q. And you have a family?

A. I do.

Q. You received your bachelor of arts degree at the University of Minnesota in 1956?

A. Yes.

Q. Bachelor of Science Degree at University of Minnesota in '57 and doctor medicine degree in Minnesota School of Medicine in '59?

A. That's correct.

Q. And a master of science in psychiatry, University of Los Angeles in '63?

A. That's correct.

Q. And also during the years 1963 to '66 you attended

1 Temple University School of Law?

2 A. That's right.

3 Q. And you received 33 credits in law during that
4 period of time?

5 A. Yes, sir.

6 Q. You did your internship at Wasworth Veterans
7 Hospital in Los Angeles, California as a general rotating
8 internship in '59 and '60, is that correct?

9 A. Yes.

10 Q. You did your residency in psychiatry at the
11 U.C.L.A. Neuropsychiatric Institute in Los Angeles from
12 '60 to '63?

13 A. That's correct.

14 Q. Compared to other disciplines in medical science,
15 how long or how does the period for residency in
16 psychiatry compare?

17 A. When I went it was comparable to most others.
18 Today residencies can go four or five years. In
19 Minnesota, I know they have Ph.Ds in surgery and they
20 went seven or eight years.

21 It is a little shorter than most of the
22 other specialties.

23 Q. You served in the military as a captain in '63 to
24 '65?

25 A. That's correct.

1 Q. You were in the medical corps at that time in Fort
2 Dix, New Jersey.

3 You did your fellowship at Temple
4 University School of Law, '65 to '66?

5 A. Yes.

6 Q. Dr. Sadoff, you are board certified, you are
7 certified in psychiatry by the American Board of
8 Psychiatry and Neurology?

9 A. That's correct.

10 Q. Since 1966?

11 A. That's right.

12 Q. You were certified in forensic psychiatry since
13 1979?

14 A. That's correct.

15 Q. And you are certified in legal medicine by the
16 American Board of Law in Medicine and you have been
17 certified there since 1981?

18 A. That's correct.

19 Q. And you are certified by the American Board of
20 Psychiatry and Neurology, added qualifications in
21 forensic psychiatry since October, '94?

22 A. That's correct.

23 Q. You are a member or were a member of the board of
24 directors of American Board of Forensic Psychiatry from
25 '77 to '83?

1 A. That's correct.

2 Q. And you were president of the board of directors
3 or American Board of Forensic Psychiatry from 1982 to
4 1983?

5 A. That's correct.

6 Q. And you were also a member of the board of
7 directors of the American Board of Law in Medicine from
8 1980 to 1985?

9 A. Yes, sir, is that right.

10 Q. And you are licensed to practice medicine in
11 Minnesota, California, New York, Pennsylvania and New
12 Jersey?

13 A. That's correct, yes.

14 Q. And you are currently a clinical professor of
15 psychiatry at the University of Pennsylvania?

16 A. That's right.

17 Q. And you have a number of editorial appointments.
18 You were the associate editor of the bulletin of the
19 American Academy of Psychiatry and Law from '79 to '83?

20 A. Yes.

21 Q. Editorial Board, Journal of Psychiatric Education,
22 1980 to '88?

23 A. Yes.

24 Q. And you were an editorial consultant, Journal of
25 Law and Psychiatry and you were on the board of directors

1 of the International Journal of Medicine and Law.

2 Do you currently hold those positions?

3 A. Some of them have ended. Right now I know I have
4 an editorial position with the Journal of Law and
5 Psychiatry and with the British journal called Journal of
6 Forensic Psychiatry.

7 Q. You were on the editorial board of the journal
8 called Contemporary Psychiatry, '77 to '81 and member of
9 the Board of Editors of the Journal of Forensic
10 Psychiatry and you are a member of the American Medical
11 Association, correct?

12 A. I was. I am not sure I am going to continue.

13 Q. And you were also a member of the American
14 Psychiatric Association and you are a fellow with that
15 association?

16 A. I am, that's correct.

17 Q. What does it mean to be a fellow?

18 A. It means one has to be nominated by ones peers as
19 having an outstanding record in teaching, practice,
20 writing three or four different areas of the practice of
21 psychiatry and then to be elected to that by the American
22 Psychiatric Association through the state and local
23 chapters.

24 Q. You are also a fellow with the American College of
25 Legal Medicine?

1 A. That's correct.

2 Q. Is that also an honorary position?

3 A. One has to be elected to that. Today one has to
4 be degreed in both law and medicine.

5 When I was given the fellowship status it
6 was grandfathered in because I was one of the early
7 members.

8 Q. You were also a fellow with the American Academy
9 of Forensic Sciences?

10 A. That's correct.

11 Q. Is that elected?

12 A. Yes. You can become a member and after awhile you
13 become a fellow.

14 Q. And you were the chairman of the psychiatry --
15 American Psychiatrists back in the '70s, is that
16 correct?

17 A. Not the American Psychology of -- it is the
18 American Academy of Psychiatry.

19 I was president of the American Academy of
20 Psychiatry in '71 to '73. But I was also a chairman of
21 the section on psychiatry for the American Academy of
22 Forensic Sciences.

23 Q. Can you tell the Court what your current hospital
24 appointments are?

25 A. Yes. I am on the staff of the hospital of the

1 University of Pennsylvania, the Institute of the
2 Pennsylvania Hospital and the Belmont Center in
3 Philadelphia.

4 Q. What have been your past hospital appointments?

5 A. I was at Temple University Hospital. I was at
6 Norristown State Hospital, Harrisburg State Hospital as a
7 consultant, the Trenton Hospital, psychiatric hospital
8 called the New Jersey Forensic Psychiatric Hospital and
9 visiting professor at the University of South Florida in
10 Tampa and Hershey Medical Center.

11 Q. You also have been a lecturer of law of Villanova
12 School of Law?

13 A. Yes. I did that from '72 to 1985.

14 Q. And you also had an appointment with Temple
15 University School of Medicine, department of psychiatry
16 back when you were at Temple?

17 A. Yes, '66 to '72.

18 Q. And you received a number of awards. You received
19 the Phillip Pinel award given by the International
20 Academy of Law and Mental Health in June of 1995 in
21 Tromso, Norway?

22 A. Yes.

23 Q. What is that?

24 A. A honorary award that the international group
25 gives to people that they designate as having made major

1 contributions to the field of law and mental health on an
2 international scale.

3 Q. And you received the Earl Bond award for
4 outstanding teaching in psychiatry at the University of
5 Pennsylvania?

6 A. Yes. That was in 1979.

7 Q. You were the recipient of the Nathaniel Winkelman
8 award in 1988, is that correct?

9 A. Yes. That is a national award given as they say
10 for outstanding contributions to the field of psychiatry.

11 Q. And in 1992 you were recipient of the -- with Dr.
12 Simon -- of Manfred Guttmacher award for best publication
13 in Forensic Psychiatry?

14 A. That's correct.

15 Q. And you have published in a number of journals
16 during the course of your career?

17 A. That's correct.

18 MR. MACLEAN: Your Honor, I would like to
19 introduce in evidence Dr. Sadoff's curriculum vitae which
20 would be Exhibit Number 137.

21 MR. BAKER: No objection.

22 THE COURT: All right. It will be marked
23 Exhibit 137.

24 Q. Dr. Sadoff, during the course of your career have
25 you treated patients?

1 A. Yes.

2 Q. Could you tell the Court during what period and
3 what extent?

4 A. Yes. I started treating patients in 1960 when I
5 started my residency and treated them right up until 1982
6 when I stopped treating patients because the pressure of
7 combining forensic work with treatment that I had to
8 reschedule too many patients. It was too hard on them
9 and me.

10 I decided to stop treating patients and do
11 forensic work exclusively.

12 Q. You have given testimony in numerous cases
13 throughout the country?

14 A. About 20 states, in federal and state
15 jurisdictions. I average about two a month and have over
16 the last 35 years.

17 Q. You testify in both civil and criminal matters?

18 A. Yes.

19 Q. When you testify in criminal matters do you
20 testify for both the prosecution and the defense?

21 A. Yes, I do.

22 Q. Roughly what percentage of the time do you testify
23 for one and what percentage of the time for the other?

24 A. Early in my career it was more for the defense
25 because that is who would call you. In the last 20 years

1 or so it has been fairly even between the prosecution and
2 defense.

3 Q. Have you testified in murder cases before?

4 A. Many times, yes.

5 Q. Have you testified in death penalty cases before?

6 A. Yes.

7 Q. Have you testified for both the prosecution and
8 the defense in death penalty cases?

9 A. Yes, I have.

10 Q. Do you have any opposition to the death penalty?

11 A. Only when it is not warranted. But not as a
12 general rule, no.

13 Q. Dr. Sadoff, we contacted you in this case to
14 consult with us, correct?

15 A. Yes.

16 Q. And we asked you to do some things.

17 Could you tell the Court what you were
18 asked to do in this case?

19 A. Yes. I was asked to read a ton of material, just
20 boxes of it and I was asked to examine Mr. Abu Ali
21 Rahman, formerly known as James Jones.

22 I was also asked to consult with Dr. McCoy
23 the psychologist that worked with us on the case. Those
24 are the three major areas.

25 Q. What materials did you review?

1 A. Well, I could read them all or note they are on
2 pages one through four of my report. They are numbers
3 one through 35. It might be faster to note that than
4 read them all.

5 Q. I am afraid we can't get your report in evidence
6 now.

7 A. I will start reading. A copy of the amended
8 petition for writ of habeas corpus. Mr. Rahman's
9 sentencing hearing, deposition testimony.

10 Number three. The records from Middle
11 Tennessee Mental Health Institute, including the report
12 of Dr. Marshal. Copy of the presentence report. Copy of
13 the records of the Bureau of Prisons FCI Inglewood, 1982.
14 Copy of the Bureau of Prisons reports for 1983.

15 The copy of the affidavit of Nancy
16 Lancaster dated May 5, 1993. Records of Metropolitan
17 Courthouse, February 10, 1987. Transcript of the
18 interview with Harold Devalle Miller dated April 23,
19 1987.

20 Examination of Harold Devalle Miller in
21 court testimony.

22 Letters of appreciation and other
23 supportive materials about Mr. Abdur' Rahman.

24 Transcript of the testimony of James Lee
25 Jones. Handwritten letters to Mr. Barrett by Mr. Jones.

1 Legal documents regarding appeals in the death penalty.
2 A copy of the transcript of the testimony of Dr. Berry
3 Nuercomb (ph).

4 Copy of the letter from David Lowe, United
5 States Magistrate to John Zimmermann, Assistant Attorney
6 General dated April 15, 1987.

7 Copy of the neuropsychological exam
8 conducted which Dr. Pamela Auble dated April, 1993:

9 Affidavit of Mark Jones, dated May 11,
10 1993.

11 Copy of the record of Mr. Jones from
12 Western State Hospital for 1964 when he was 14 years of
13 age.

14 Next number, review of the cases of Graham
15 versus State; State v Clayton; State versus Sparks; State
16 v Brown; State v West and State v Phipps.

17 Next, a copy of the presentence report
18 dated July/August, 1987. Memorandum of order of Rahman
19 by Judge Kurtz dated August 26, 1993. Dr. Neurcomb's
20 file.

21 Then transcripts of the following
22 testimony given at James Jones' trial: The testimony of
23 Norma Norman; testimony of Devalle Miller; testimony of
24 Mr. Jones; testimony of Susi Jones.

25 Next is a transcript of the following

1 testimony given at James Jones' post conviction hearing:
2 Testimony of Devalle Miller; the testimony of Susi Jones;
3 testimony of Dr. Neurcomb; testimony of Gail Hughes.

4 Then transcripts of the following testify
5 at Devalle Miller's sentencing hearing, that of Karen
6 Miller and Devalle Miller. Next is a transcript of the
7 state's interview of Devalle Miller, police reports in
8 this case.

9 The military records of James Jones and
10 transcript of James Jones' 1972 murder trial. The
11 presentence report of James Jones. And various
12 institutional records of Mr. Jones including records from
13 Western State Hospital in Washington, from the
14 Philadelphia School System, from the United States
15 Department of Justice, Bureau of Prisons, from the
16 Metropolitan Courthouse.

17 The affidavit of Mark Jones. The
18 memorandum of opinion of Judge Kurtz and the briefs filed
19 in the appeal on behalf of Abu-Ali and the state.

20 Those are the records that I reviewed.

21 Q. Now, did you also consult with Dr. Diana McCoy?

22 A. Yes.

23 Q. What was her role in the case?

24 A. Her role, as I understand, was to do two things.
25 Conduct psychological testing to the extent necessary and

1 do a complete social history not only by talking with Mr.
2 Abdur' Rahman but also to talk to other people in the
3 family of those connected with the case so we can get
4 corroborating information that would either support or
5 deny what he may have told us.

6 Q. Did you conduct examinations of Abu-Ali?

7 A. Yes.

8 Q. When did you conduct those examinations?

9 A. I did four of them. First was on October 30,
10 1996. Second was October 31, 1996. Then April 24, 1997.
11 And most recent was June 3, 1997.

12 Q. Approximately how long were those examinations?

13 A. Most of them were several hours. I would say the
14 total for the four would be somewhere between 12 and 15
15 hours.

16 Q. Dr. Sadoff, what is the importance of a social
17 history in a case of this sort?

18 A. The social history is important because you have
19 to know who you are dealing with, the kind of ideation,
20 the pressures on him, the positive things in life, how he
21 acted to various areas of life, social history, his
22 educational history, work history, family history,
23 medical, psychiatric history.

24 All of that is very important to know what
25 kind of individual am I sitting in front of at the time I

1 am and what made him in many ways or influenced him to be
2 the way he is.

3 Q. What is the -- is a personal examination of the
4 defendant in a case of this sort important?

5 A. In my opinion it is not only important but
6 essential. I have written several times examination in
7 forensic cases is necessary but not sufficient. Some of
8 it is important but you need more than just the
9 examination.

10 Q. Why is an examination important?

11 A. Well, the examination is important so you can
12 observe the individual, see how he responds to various
13 questions that you pose. Does he break down, does he
14 show more emotion or passion for various areas you are
15 talking about?

16 Does he hesitate? Is he resistant, is he
17 cooperative? What is he saying about various things and
18 how does it conform to statements made by others?

19 How consistent is he from one examination
20 today to the next? How consistent is he within his own
21 statements that he may have made to other people that he
22 is making to me several years later or in many cases it
23 is only several weeks or months after the event in
24 question?

25 But it is for all these reasons that one

1 has to sit down with a person who is charged and talk to
2 him, examination him.

3 In psychiatry they tell us we really
4 should not make diagnosis of people without a direct
5 examination unless it is impossible to get.

6 For example, in cases where the person is
7 already dead or some state's -- notably in Pennsylvania
8 in the past when I do work for the prosecution there was
9 a prohibition that the defense attorney did not have to
10 allow his client to be examined by the expert for the
11 prosecution.

12 Many times I was just not able to, even
13 though I asked to see the person. Sometimes a judge
14 would allow it but would not force the defendant to even
15 speak with me. He would just have to be present and I
16 could observe him.

17 There are various level of examination
18 that one can do. I want to at least try to see the
19 individual if he or she is available.

20 Q. Did you reach a diagnosis as a result of your
21 examinations, your review of the documents and
22 consultation with Dr. McCoy?

23 A. Yes, I did.

24 Q. What is your diagnosis of Abu-Ali?

25 A. Okay. We give diagnosis on different axis in

1 psychiatry one. One is the major diagnosis, and I called
2 him a post traumatic stress disorder which means that a
3 person has experienced tremendous stress in his life or
4 one acute episode of stress that resulted in various
5 symptoms to the individual.

6 For Mr. Abu-Ali Rahman, he has had
7 tremendous stress as a youngster and we can go into what
8 some of the traumatic experiences were and how it
9 affected him throughout his life. That is his major
10 diagnosis.

11 The personality diagnosis which is axis
12 two, the predominant one is borderline personality
13 disorder which encompasses a number of various traits and
14 features that are specific to this particular diagnosis,
15 but also overlap with other personality disorders or
16 traits, including antisocial, narcissistic, schizoid and
17 other features he may have.

18 I did not find anything on axis three
19 which is the physical diagnosis.

20 THE COURT: What is axis one.

21 Q. Explain the axis?

22 A. I thought I had. Axes one is the major diagnosis
23 that a person has so that the particular diagnosis that
24 one would have, for example depression, schizophrenia,
25 the major illness.

1 In this case I called it post traumatic
2 stress disorder.

3 Axes two is the personality axis if one
4 has one. One always doesn't have a personality problem
5 or disorder.

6 Mr. Rahman, he does have a borderline
7 personality disorder. That means it started early in
8 life. It is away of adapting lives stresses and the way
9 he goes about it.

10 For example, personality trait many of us
11 in this room, I suspect, have obsessive compulsive
12 traits. It is not a disorder. It means we are neat,
13 ordinarily, we are directed and we do things in a very
14 structured fashion. Couldn't get through law school
15 without it, couldn't handle a case like this without
16 that. You couldn't get through medical school.

17 As long as it doesn't get in the way of
18 our succeeding in what we are doing it is not a
19 disorder.

20 So, we all have personality traits and
21 sometimes they are diagnosable because they sabotage our
22 efforts to succeed.

23 Somebody that is so excessive compulsive
24 has to wash his hands or change his clothes three, four
25 times a day. He can't get things done and needs help.

1 Most of us don't because it is in the
2 service of the ego that we are helping ourselves by using
3 these defense mechanisms or traits.

4 Axes three is the physical problems.
5 Somebody has an ulcer or brain tumor or something else
6 that might be affecting his state of mind, he should
7 include it because it is a significant diagnosis.

8 Q. Is post traumatic stress disorder a mental illness
9 in your opinion?

10 A. Yes, it is.

11 Q. Is borderline personality disorder a mental
12 disorder?

13 A. It is a mental disorder. I don't know that I
14 would call it an illness. I think of all the personality
15 disorder -- borderline personality disorder comes closest
16 to being an illness because it has so many features
17 including the fact that under stress the borderline can
18 break down and become psychotic, which means not in touch
19 with reality, and he would need medication for that.

20 I usually reserve the word mental illness
21 for one that can be responded to or treated with some
22 kind of medication.

23 Q. Now, let's first of all talk about borderline
24 personality disorder.

25 THE COURT: Let me interrupt.

1 Are you saying this diagnosis is the
2 current state of Mr. Rahman?

3 Are you saying this was his state of
4 affairs 11 years ago?

5 A. Okay, Your Honor. I think the borderline
6 personality disorder is something that stays with him for
7 life. I think he has that today and I think he had it at
8 the time of the event in question.

9 The post traumatic stress disorder,
10 because it came from traumatic experiences he had in
11 early childhood, I think was with him when this all
12 occurred.

13 I think there is still evidence for traits
14 of it even today. Some of the symptoms we see overlap
15 between the post traumatic stress disorder and the
16 borderline personality disorder.

17 THE COURT: All right. Go ahead.

18 Q. Let's talk about borderline personality disorder.

19 First of all, these disorders or illnesses
20 are defined or set out in the DSM 4, correct?

21 A. That's correct.

22 Q. Diagnostic and Statistical Manual of Mental
23 Disorder, fourth edition published by the American
24 Psychiatric Association?

25 A. That's correct.

1 Q. This is the official publication of the American
2 Psychiatric Association setting forth the classifications
3 of mental disorders and diseases and criteria that are to
4 be used to diagnosis them, is that correct?

5 A. That's correct. It was done by a committee with a
6 number of experts who put input into the committee based
7 upon experiences in their clinical practice, research
8 practice and this is the outcome of years of that and the
9 revision that has occurred. This is the full fifth one
10 because there was a DSM 3 revised. This is the fifth
11 edition since about 1960.

12 Q. Back in 1986 or '87 was it the DSM 3 or DSM 3-R?

13 A. No, it was DSM 3 came out in '80 and I believe DSM
14 3-R came out in '87. But they had preliminary findings
15 and sending stuff out to us about what they were going to
16 publish in the DSM-R.

17 But it was official one through three.

18 Q. The diagnosis you are giving to Mr. Rahman, sir,
19 under DSM 4 or the diagnosis under 3 or 3-R?

20 A. There certainly is in DSM 4. I haven't looked
21 back to see if they are in in DSM 3. That was the plan,
22 or change in our diagnostic manual adding the axis and
23 all the various comments about the diagnoses. I suspect
24 they were there.

25 Borderline personality disorder has a long

1 and tortuous history and wasn't always what it is, I
2 think in the DSM 3 or 3-R. It is well established today
3 and clearly clear in DSM 4.

4 Q. Now, describe to the Court what a borderline
5 personality disorder is.

6 A. It may take a few minutes, Your Honor.

7 Borderline personality disorder is
8 more frequent in females than in males. It starts out
9 early in life as a way of defending against the
10 pressures and stresses that one faces as a youngster.
11 The major concern for the borderline is the fear of
12 abandonment.

13 So that the people that I have seen with
14 this diagnosis, and there are many, have been abandoned
15 when they were younger and they are reacting to that
16 abandonment by trying to prevent other people from
17 abandoning them. These abandonments might be real,
18 fantasy or anticipated. They may not always be real in
19 fact.

20 And what the person feels number one is an
21 emptiness inside that he is not complete. There is
22 something missing. And they are looking for the pieces
23 to fit right.

24 Because of that, they have various
25 symptoms such as an identity confusion. People don't

1 know who they are. It might be a sexual identity, gender
2 identity. So you see a number of people with borderline
3 personality disorders that might have homosexual as well
4 as heterosexual or bisexual orientation.

5 They may be with various groups in the
6 area because they don't know who they are or where they
7 belong. There is a feeling of confusion.

8 Sometimes one sees this in people of mixed
9 ethic background. For example, someone like Mr. Abu-Ali
10 Rahman that has a Caucasian maternal grandfather, a
11 Cherokee mother and African-American background as well.

12 There is a question am I African-American,
13 am I native American, what is my orientation? What is my
14 identity?

15 There are times when people will identify
16 with different groups. Because of the concern about
17 abandonment there is a feeling of lack of trust that is a
18 major issue. So they have difficulty in interpersonal
19 relationships and don't have stable relationships. They
20 don't have them in work, in marriage, in partners, in
21 friends and they are seeking the stability but because of
22 their own problems they are never able to achieve it.

23 There is also what is called a boundary
24 confusion. Where do I end and you begin.

25 So a number of borderlines are very

1 intrusive on other people. They are the most difficult
2 patients to treat.

3 The damage in my office has all been
4 caused by the borderline patients I treated, the
5 scratches in my desk, the broken lamp or whatever,
6 because of their impulsive behavior take the anger that
7 comes up so quickly and the lack of stability and lack of
8 trust.

9 The borderlines boundary violations cause
10 a number of -- for example, attractive women patients to
11 have sexual relations with their male therapist and cross
12 the boundary and encourage the doctor.

13 It is always the doctor's responsibility
14 not to do it but most of the cases I have been involved
15 in where I have had to evaluate this kind of a claim it
16 has been a borderline personality patient.

17 So the boundary violation, the confusion
18 seeing things in shades of black and white and no shade
19 of gray.

20 In a hospital ward they are very difficult
21 to treat. What they will do is they will pit one
22 therapist against the other. They will say you are the
23 only one that can help me because I want to tell you a
24 secret and you can't tell anybody else.

25 You can't do that because it is splitting

1 the staff.

2 They see it only as if you are not for me,
3 you are against me, black or white, extremist.

4 These are some of the major
5 characteristics of the borderline personality disorder
6 and the difficulties that they have in living in our
7 world because most of us don't perceive things the way
8 they do.

9 There is a distortion of their perception.
10 When stress becomes excessive they breakdown to
11 psychosis, dissociate, which means their memory goes and
12 they don't remember some things that happened. They have
13 experiences of loss of time, they may not hear when
14 somebody is speaking to them.

15 Let me just clarify what dissociation is
16 because it is relevant here with a borderline.

17 There are many forms of normal
18 dissociation. When we are driving down the street and
19 want to make a right turn, we go straight and miss the
20 turn. That is normal. Sitting in church and listening
21 to the pastor or minister speak at the sermon and you are
22 thinking about a hundred other things and somebody says,
23 what did he speak about today? I don't know. I was
24 there and listened but I really didn't hear it so I can't
25 remember it. That is a normal form of dissociation.

1 Sleep walking is, crystal ball gazing. We
2 are getting down where is it not normal. You have things
3 like hypnosis is a form of it. Multiple personality
4 disorders. Now we call it dissociate identity disorder.

5 It is a form of pathological. The fugue
6 state is way at the end where a person leaves town,
7 changes his whole identity and doesn't have any memory at
8 all as to what happened in his previous life.

9 The classic example is the sports
10 announcer in Cleveland that went to Des Moines, Iowa and
11 became a salesman in a sporting goods store and had
12 another wife and family and 20 years later discovered he
13 had a family back in Cleveland. He had no memory for it
14 at all.

15 That is a fugue that is a great extreme
16 but it does happen. I see this on a continuum.

17 So dissociation is one of the things that
18 can happen to a borderline under stress.

19 Psychosis is another. Just breaking down
20 in an acute way, needing treatment with medication
21 sometimes and then coming back to his usual or her usual
22 state.

23 So it is a fragile adjustment at best but
24 it is an attempt by the individual to deal with the
25 pressures and stresses that were on his or her life.

1 This is why there are similar symptoms in borderlines to
2 those with post traumatic stress disorders.

3 THE COURT: Let's adjust the microphone a
4 little bit. We can raise it up a little bit. I think
5 that will be helpful. Thank you.

6 Q. Dr. Sadoff, let's move on to post traumatic stress
7 disorder.

8 Explain to the Court what that is and how
9 it is similar to borderline personality disorder.

10 A. Post traumatic stress disorder is a condition that
11 is caused by a stress that would normally cause stress in
12 the average individual. It has to be serious.

13 There are a number of people that have
14 features or symptoms of let's call it PTSD. But the
15 stress was not significant, was not great enough to
16 warrant such a diagnosis.

17 I have seen a number of people like that
18 fender benders and things like that. The Vietnam war is
19 where this came out of. People went into serious shell
20 shock seeing their buddies getting their heads blown off,
21 et cetera. That is a serious threat.

22 A woman is threatened with a knife, and
23 that can lead to it. If a man is mugged at gunpoint in
24 New York and fears for his life, or pistol whipped by
25 robbers can get PTDS.

1 There are a number of plane crash people I
2 have seen that survived the plane crash that have
3 developed it. I think it is the kind of thing that first
4 of all you need that kind of severe or serious trauma or
5 stress. It doesn't have to be one time. It can be also
6 a series of traumatic events in a person's life such as
7 incest for young girls who develop PTSD, it can be a
8 series of brutality or brutal experiences at the hand of
9 one parent or parent surrogate that takes care of the
10 children.

11 The symptoms as are follows: First of all
12 you have nightmares. The nightmares are either directly
13 reflective of the trauma or they are disguised in a way
14 but the analysis that takes the content of the nightmares
15 can find some linkages to the trauma that the individual
16 has experienced. These can be nightly, they can be
17 several times a week.

18 But what happens is in legitimate cases is
19 that the nightmares get less intense and less frequent.
20 When I see somebody five years after an accident and he
21 says I still have terrible nightmares every single night,
22 I am cynical about that. I question it. Because that is
23 not the natural course of the disease.

24 The other thing they have are what are
25 called flashbacks. Flashbacks are not just memories of

1 the traumatic events. They are reliving with the
2 physiological concomitants, the goose bumps, sweating,
3 emotional reaction that they will have telling these
4 traumas or they tell it with such a bland affect that
5 they are covering over and defending against the
6 intensity of their emotional impact.

7 But when they actually experience it, they
8 experience all the emotions with it.

9 Those are the two major symptoms. Then
10 there are the hypervigilance or the startled reaction.
11 Some people feel unless you get a positive startle
12 reaction you don't have a true PTSD.

13 Other researchers have found it is absent
14 in up to 70 percent of the people. A way to try to
15 elicit that if you are with a patient and without his
16 knowing it or suspecting it, you get behind him and clap
17 your hands very quickly into his ears. Most of us will
18 jump a little but most will jump out of the chairs.

19 The people in Vietnam, when they hear a
20 backfire of an automobile will hit the deck. They will
21 get down on all fours and flat on the ground. Because
22 their fear there is a shooting and they are going to be
23 killed.

24 There is also the other extreme, is that
25 they alienate themselves from other people, withdraw from

1 people and from interaction because they are so loath to
2 get involved about a relationship with others because
3 they can't trust. You have the overlap with the
4 borderline personality disorder.

5 So, these are the major symptoms of PTSD.

6 Q. Dr. Sadoff, did you consider antisocial
7 personality disorder as a possible diagnosis?

8 A. Yes.

9 Q. Did you reach that diagnosis?

10 A. I did not reach the diagnosis because his major
11 personality disorder is borderline personality disorder.

12 It is not appropriate to have two dominant
13 personality disorders. You look at the one where the
14 classic symptoms are, more predominant ones are there.

15 Does he have antisocial traits? Sure he
16 does. He has narcissistic traits, schizoid traits.

17 Could I have called him a personality
18 disorder not otherwise specified, which we used to call a
19 mixed personality disorder? Yes, I could have.

20 But I chose to call the dominant one
21 because clearly the borderline features are the strongest
22 and most predominant.

23 He clearly has other traits and features
24 as well that one can't ignore.

25 Q. You mentioned narcissistic traits. What does that

1 mean?

2 A. Narcissistic traits is when a person
3 overcompensates for feelings of inadequate situations
4 and begins to look a little arrogant or some people call
5 it self-interest.

6 The narcissis was in Greek mythology, that
7 was this man that loved the reflection of his own image
8 that he saw in the pond that he got so close he fell in.
9 That would make it a disorder because it would lead to
10 damage.

11 But I see narcissism not as a positive
12 thing that somebody really cares about themselves or
13 vanity, it is more of a cover-up for feelings of
14 inadequacy.

15 People might be short, they might be
16 slight, way overweight, may not be good looking and put
17 on airs that they are better than they appear in order to
18 make themselves feel better.

19 So they overreach in a since and they look
20 to be narcissistic.

21 Q. You mentioned schizoid. There has been mention in
22 these records as to schizoid characteristics. What is
23 that?

24 A. It means a person has usual relationships with
25 people and objects that they are bizarre at times and say

1 unusual things and do unusual things.

2 With Abu-Ali, his relationship with the
3 animals which goes way back and supported corroboratively
4 by other statements in the records, that he would go
5 off in the woods and he would talk to the animals and
6 they would be his friends and he would look to them to
7 protect him from the wrath of his father and other men
8 that became like his father that would abuse him
9 throughout his life.

10 Most people don't do that. It is an
11 unusual kind of symptom.

12 He would howl like the wolf. Not
13 believing he was a wolf. If he believed that he would go
14 from schizoid to perhaps schizophrenia. He just wanted
15 to communicate with them and maybe they would come help
16 him, as the birds would help.

17 The robin and the sparrow, maybe the
18 cardinal would carry messages to the other animals for
19 them to help him.

20 That is an unusual symptom. That was part
21 of his schizoid.

22 Q. You mentioned paranoid. Most people, laymen have
23 different terms.

24 How is that used by a psychiatrist?

25 A. Paranoia has two meanings. It is a projection of

1 | ones own feeling on to another.

2 Two guys walking down the street. One is
3 paranoid, one is not. The one paranoid looks at the one
4 that is not and says he doesn't like me. How does he
5 know? Because I don't like him, I project my feelings on
6 to him. But I can't own my own feeling. I can't take
7 credit for them. That is what it means technically.

8 Generally people use it to mean overly
9 suspicious, mistrusting, et cetera. People that project
10 their own feelings on to others are mistrustful. They
11 don't trust others.

12 So with Abu-Ali, he has had great
13 difficulty trusting, especially Caucasians. And he has
14 great difficulty trusting the kind of African-American
15 male that represents the kind of person that he saw in
16 his father and who have abused him all his life and so he
17 has -- so he doesn't trust them for good reason.

18 Q. Dr. Sadoff, could you please explain to the
19 Court -- you have listed the things you have done. Can
20 you explain to the Court what you did, what you found and
21 then how you arrived at your diagnosis in this case?

22 A. Okay. Reading everything and talking with
23 Abu-Ali, I found he had all of these traits and symptoms
24 and diagnoses.

25 One of the major concerns I had as a

1 forensic psychiatrist was that he had no memory when I
2 spoke to him on all four occasions, no memory of what
3 happened after he was putting the duct tape on Norma
4 Norman until he was about a half mile away from Devalle
5 Miller's house. He was driving the car. That was
6 consistent.

7 When I looked at the records, he didn't
8 remember either. There were times when he would say
9 things like, yes, I must have done it. They told me I
10 had blood on my pants. They told me that Miller said I
11 was the one that did the stabbing. I must have because I
12 have no memory for it. I can't say I didn't. I must
13 have.

14 But there was always this doubt. And in
15 all the testimony I have read that he has given of, I
16 don't remember, I don't remember, but, yes, I must have
17 done it because of, quote, the evidence that people told
18 me -- which we found out later, at least the blood on the
19 pants was not so.

20 So, I was concerned about his lack of
21 memory.

22 I then took a detailed history of other
23 memory loss episodes in his life. He had a number of
24 them. He had his hysterical blindness while in
25 Petersburg just before the death of Michael Stein, the

1 homosexual who had attacked him and after he had been
2 raped and labeled as a homosexual and a target and victim
3 in the prison.

4 He had other times when his wife
5 Rosilie -- first wife -- would say to him things and he
6 had no memory what she said.

7 His second wife, Susi Bynum, said he would
8 stare off into space and wouldn't seem to be there.

9 There were other statements even by Miller
10 that said on this occasion he seemed to change abruptly,
11 it was a side of him he never saw before. He may be the
12 only one that saw that. It frightened him when he saw
13 it.

14 There are a number of these in the records
15 and what he has told me about. I was concerned he may
16 have used dissociation as a defense mechanism, as a way
17 of handling overwhelming stress.

18 I asked him about the times he was raped
19 in the prison. Each time he had been dissociated.

20 Women who have been raped will tell you
21 they sometimes float above their body and look down on
22 the rapist and on themselves so they are not really there
23 and it is a defense mechanism, a way of handling the
24 stress and trauma. Exactly that happened to him as well.

25 So he had the capability under stress to

1 disassociate.

2 I went on a premise of what happened at
3 the time of the death of Patrick Daniel was that he had
4 dissociated. But I didn't know for sure. I wanted to
5 see if I could at least increase my degree of confidence
6 in that opinion.

7 One of the ways to doing that that I have
8 done in the past, I used what is called sodium amytal,
9 which is a truth serum. It is not for truth it is just
10 to help people with their altered state of consciousness,
11 to bring back memories they had repressed. I don't use
12 that anymore.

13 I used hypnosis. I don't do it. I have
14 an expert that has been doing it probably for 40 years, a
15 Dr. Lewis Dubin who has been president of the American
16 Society for Clinical Hypnotists, teaches at Temple
17 University and has done it at least a hundred hypnosis,
18 evaluation of cases I referred to him.

19 And he came out and he did hypnosis on
20 Abu-Ali. He wanted to see if he could recover memory
21 that Abu-Ali said he didn't have.

22 Again, I don't know if he didn't remember.
23 He said he didn't remember. It was consistent throughout
24 the records. At least we have to try.

25 Q. Doctor, before we get to the hypnosis, let me ask

1 you about some of your examination of Mr. Rahman. I will
2 go through and look at the borderline features.

3 You described to the Court some of the
4 borderline features, things as frantic efforts to
5 abandonment and unstable interpersonal relationships, et
6 cetera.

7 Can you go through and describe to the
8 Court what you observed of the your examination of
9 Abu-Ali that would relate to those features that helped
10 you reach the diagnosis?

11 A. When you start with the history, you get to his
12 parents which I think is the the important primordial
13 experience. His father would beat him. His father would
14 do, I suppose, unspeakable things to him, things I never
15 heard before.

16 For example, tying his penis to a clothes
17 hook in the closet and locking him in the closet for
18 hours at a time. He was terrified. He was five, six,
19 seven years of age. This would be repeated.

20 The father would take the baseball bat and
21 sting the end of his penis with it. He made sex seem
22 dirty to him, further adding to is confusion.

23 He saw himself as a youngster as a female.
24 He saw himself more like a girl than a boy. And
25 identified more with females than males.

1 He was sexually abused in prison when he
2 was still young and impressionable.

3 His mother did not protect him from his
4 father. In fact, his mother was also a source of
5 aggravation to him because she would have men in the
6 house having sex while his father was off in the military
7 on a mission, and do it in front of him and the other
8 children. He was discussed with that. And the smell of
9 sex, as he said, was upsetting to him.

10 His mother also was not giving him the
11 kind of nurturing to balance the lack from his father.
12 So, he really had no nurturing from his parents.

13 There was some touching with his sister
14 for which he was beaten. There are a number of events in
15 his early life that led him to fear abandonment. He
16 sought solace by himself from the age about nine to 17.

17 He ran away from home several times, four
18 or five days at a time living in the woods, eating
19 whatever he could find.

20 He was first involved in an antisocial
21 act, I suppose that is what they called it, when he was
22 ten. But his point was he was getting back at his father
23 for what his father did to him.

24 Then when he was 12, he was sent to an
25 institution because of getting back with his father.

1 These are the sources of some of the
2 symptoms. For him it was the identity confusion
3 throughout his life -- we latch on to dominant groups --
4 starting, I suppose, with gangs when he was younger in
5 Philadelphia. I come from there, and I know we have
6 gangs there and African-American youths protected
7 themselves by joining together in gangs.

8 He was identified then as a homosexual in
9 the prison. He didn't like that and fought against it
10 and as a result of the pressure on him, Michael Stein was
11 killed as he protected himself from an assault.

12 When he was older, he identified with
13 various groups including the Sioux Indians in South
14 Dakota where he lived a few months, the Quaker movement.
15 A woman befriended him in Chicago. SEGM, the
16 Southeastern Gospel Ministry when he was in Nashville.
17 Saw that as a chance for him to identify with the group
18 he believed in, could do something for, and since he has
19 been in prison he has been involved in Islam.

20 I think he has found his most stability
21 and has become a stable force for people in prison
22 because of that identification.

23 So his identification, his identity is one
24 area we talked about. His boundary violations.

25 Sometimes he would see things in a

1 distorted way. The way other people go.

2 For example, if you look at SEGM, I don't
3 know what they are all about. I don't know if they were
4 a military group, if they espoused getting rid of the
5 black drug dealers in Nashville to make the community a
6 pure place and better place. I do know that is what
7 Abu-Ali believed. That was his mission, his
8 identification.

9 But he is borderline. He can distort
10 things that people give him to meet his own needs at the
11 time. That is what he believed in and that is what he
12 acted upon.

13 As far as his fear of abandonment, he
14 would have difficulty trusting relationships and people
15 and whether they would stay with him and whether they
16 would betray him. He has been betrayed so many times.

17 He was made to give sexual favors in one
18 prison for protection against the rapes of others. He
19 felt betrayed by his father who he described as a dark
20 male with Jeri curls, and when we see other dark black
21 males with Jeri curls he would immediately identify them
22 with his father and say they must be bad, I have to stay
23 away from them or they need to be eliminated, we
24 shouldn't have them in our community because they are a
25 negative force on the goodness in our community.

1 He also, again, would see things in black
2 and white, dark males with Jeri curls was all bad. He
3 didn't know these people. Some might be very nice
4 people. Because they looked a certain way, he judged the
5 book by its cover. He shouldn't do that. That is the
6 the way borderline does it.

7 Children are all good. But his belief
8 that children exposed to the men with Jeri curls would be
9 abused as he was abused, and they would be around the age
10 of 13 as I think he felt he was. He begins to identify
11 not just with children but with young girls. That is
12 what he felt he was when he was younger. His
13 identification of the animal calls, they are not going to
14 betray him. They are not humans.

15 So animals and children were good and dark
16 males with the Jeri curls were all bad. Very little
17 shade of gray in between.

18 These are some symptoms I found
19 borderline.

20 Q. When you examined him did you see signs of bizarre
21 or idiosyncratic or delusional thinking on his part?

22 A. Yes, there were signs. He felt he was like Gandhi
23 and Mohammed and Crazy Horse and others that stood up for
24 their rights and led the troops. He saw himself as a
25 leader, a good soldier doing what he felt was right

1 within the context of the situation that he found
2 himself.

3 The other aspects on borderline -- I
4 didn't get into his trust. Not only did he not trust
5 people but he didn't trust them for different reasons.
6 For example, if I may say so, in my notes I remember
7 saying he didn't trust you because you were Scotch. Dr.
8 McCoy was all right because she had Spanish blood. What
9 the heck does that make any difference about it? That is
10 the way he saw people. That is the disorder and
11 borderline part of the mistrust issue.

12 Q. I am looking down at the diagnosis criteria for
13 borderline and number five is recurrent suicidal behavior
14 and threat of self-mutilating behavior.

15 Is that a characteristic aspect of a
16 borderline?

17 A. It is characteristic. He repeated suicide
18 attempts in his life.

19 Q. What is the cause of that?

20 A. The cause is several fold. If you have one
21 suicide attempt that is successful we know that a person
22 was really suicidal and depressed. Borderlines will do
23 it for other reasons. Primarily they will do it for
24 attention and influence.

25 So that a borderline patient will call the

1 doctor and say if you don't come and see me, I am going
2 to kill myself. They will do it as a threat.

3 Doctors are concerned about their patients
4 so they give in sometimes to these threats. But the
5 doctor that treats the borderline has to know it is not a
6 serious suicidal threat. It is an attention seeker, a
7 way of handling don't abandon me, doctor, stay with me
8 when I need you.

9 The doctor has to set the limit at the
10 beginning of the treatment and say, look, these are the
11 rules I set, these are the boundaries you're not to cross
12 them. If you do, I will maintain the boundaries.

13 A good therapist will. Most borderlines
14 will not be successful in this because they are not
15 interested in dying. They are interested in
16 manipulating, getting attention and interested in don't
17 abandon me.

18 Q. I notice there is another criteria; inappropriate
19 intense anger or difficult controlling anger, frequent
20 displays of temper, constant anger, recurrent physical
21 fights.

22 Is that characteristic of borderline?

23 A. It is. Because the issue of trust, issue of
24 shades of gray and distortion and reality. So you see
25 the frequent fights.

1 Are frequent fights part of the borderline
2 or part of the antisocial personality disorder? You have
3 them in both.

4 He has so much more in the borderline that
5 is the dominant personality trait. Sure it is part of
6 the antisocial, too. Unless he is defending himself
7 against larger people that are teasing him and
8 threatening him and bullying him.

9 For Abu-Ali grew up small and effeminate,
10 as he says, he had to fight his way out and he was very
11 angry and especially against the kind of black male that
12 he believed was like his father, out to harm him. He
13 would get very angry at and sometimes overreact.

14 Q. Another criteria is impulsivity in two areas that
15 are potentially self-damaging that would not include
16 suicidal behavior, spending, sex, substance abuse,
17 reckless driving, binge eating. That is out of the DSM.

18 Did you find that sort of impulsivity in
19 James Jones?

20 A. I found it in the use of drugs. But the drugs he
21 could rationalize, he was using marijuana, LSD, peyote
22 and other psychedelics primarily for medicinal and
23 religious reasons. We don't use heroin or cocaine or
24 speed or any of those. It is if good and bad.

25 He would show impulsive behavior that

1 way.

2 Q. And then another characteristic or criteria is
3 affective instability due to a marked reactivity of
4 mood.

5 Can you explain that and explain why that
6 is characteristic of borderline?

7 A. Yes. The borderline again has instability. It is
8 very fragile in a sense in his defense mechanisms. The
9 mood, if somebody says the wrong thing at the wrong time
10 sets it off very quickly and they can get very angry,
11 cry, go into a number of different moods.

12 Having treated a number of borderlines who
13 are not violent, you see that mostly with tears with
14 some, anger with others. The anger can be overwhelming
15 because of the fear of inadequacy, you don't love me, you
16 are going to abandon me and how dare you.

17 Even though it wasn't meant that way this
18 is the perception they have through the distortion of
19 their views, because they are borderline.

20 You see that kind of anger and abrupt mood
21 changes. That was seen by Devalle Miller, by his
22 statement at the time and I think recorded by Mark Jones
23 in his affidavit.

24 Q. Dr. Sadoff, let's turn now to post traumatic
25 stress disorder.

1 What specifically did you see in James
2 Jones that led you to that diagnosis?

3 A. Yes. He had nightmares of the traumatic
4 experiences he had as a youngster. He had sleep
5 difficulties, he had flashbacks of those experiences and
6 phenomenon that he relived, he had alienation from
7 others.

8 He would go off into the woods. He
9 couldn't stay with other people. There was an
10 instability of his relationships. He would also have
11 this hyper-vigilance where he was extremely aware what
12 was going on around him, very careful.

13 Again, is that paranoid or part of the
14 hyper-vigilance of the PTSD? You can't explain one
15 because it might belong to another.

16 Q. Dr. Sadoff, what kind of affect do drugs such as
17 marijuana or LSD have on someone with either one of these
18 problems?

19 A. Marijuana -- mostly on the borderline, marijuana
20 is really not a good thing to take. It confuses even
21 more.

22 LSD certainly does and can create
23 hallucinations and delusional thinking. That the
24 borderline is prone to anyway under stress.

25 The PTSD again is holding on gingerly, I

1 suppose, and if you lower the defenses by using various
2 drugs that are psychedelic in nature and can cause
3 confusion of the mind, you make the person worse.

4 There was a borderline case I had helping
5 to defend in a civil action because a psychologist had
6 given or smoked marijuana with her patient. They were
7 both females. And the patient became psychotic. It was
8 due to the marijuana or boundary violation.

9 There are a number of issues. From my
10 experience and what I know, marijuana and LSD and those
11 drugs are really poison for the PTSD and the borderline.

12 Q. I want to turn now to your evaluation or
13 determination of what Abu-Ali's mental state may have
14 been at the time of the offense in this case.

15 You mentioned before one of the things
16 that caught your attention was a lack of memory?

17 A. Yes.

18 Q. You have reviewed his testimony in his trial,
19 correct?

20 A. Yes, I have.

21 Q. I want to show you that testimony.

22 Q. Doctor, do you need a break?

23 A. I am fine.

24 MR. MACLEAN: Your Honor, I would like to
25 make this Exhibit Number 138.

1 THE COURT: All right.

2 MR. MACLEAN: For the record it comes from
3 the trial transcript, original trial transcript and
4 includes pages 1864 through 1867 and then 1893 through
5 1896.

6 THE COURT: Is this Mr. Jones'
7 testimony?

8 MR. MACLEAN: This is his testimony in
9 the sentencing hearing.

10 The first portion of 1864 through 1867
11 was on direct examination when Mr. Lionel Barrett, I
12 believe, was asking the questions and then the second
13 portion from pages 1893 through 1896 were on
14 cross-examination when Mr. Zimmermann was asking the
15 questions.

16 Q. Now, first of all, doctor, early on in your
17 work, did you have an opportunity to review this
18 testimony?

19 A. Yes.

20 Q. And in this testimony it appears that James Jones
21 admitted killing or stabbing Patrick Daniels and stabbing
22 Norma Norman?

23 A. Yes.

24 Q. In your opinion is this consistent or inconsistent
25 with your view he lacked memory of what happened at the

1 time?

2 A. It is consistent with my view he had memory
3 impairment at the time because of two things. He keeps
4 saying in here --

5 Q. Wait.

6 A. It is consistent.

7 Q. What I would like you to do is read through this
8 and as you are reading through it explain to the Court
9 why you have that view?

10 A. Should I read every word out loud?

11 Q. Yes, starting with line number 17.

12 A. Question. From that point in time, go ahead and
13 tell the jury what happened, specifically, what you know
14 as to how these individuals received stab wound resulting
15 in the death of Patrick Daniels.

16 Answer. At that particular time, after
17 Ms. Norma Jean Norman came out of her room, as I said, I
18 had tied her up. At that particular time, after I tied
19 her up and bound everything that she said that I had
20 bound up on her, at that particular time, I can't give
21 you -- to you detail to detail on how things transpired
22 insofar as Mr. Daniel Patrick's death and Ms. Norma Jean
23 Norman's assault.

24 He is saying at the very beginning, I
25 can't tell you.

1 When I say that, I mean I am saying that
2 my mind -- not telling you I was crazy. I am not saying
3 I am crazy. What I am saying is that I am going to
4 submit to the fact that I am the individual that
5 committed these particular felonies or assaults on these
6 two people. But I don't remember -- you know.

7 He is saying I have to admit I am the one
8 who must have done it. I don't remember it. There is
9 blood on my trousers and Devalle said I did it so it must
10 have been me.

11 I don't remember too much of why that all
12 of a sudden came to me. All I know is I am the man that
13 stabbed Mr. Daniel Patricks and I am the man that
14 assaulted Norma Jean Norman.

15 At that time he was already found guilty
16 of the stabbing and killing by the jury.

17 Q. What is he trying to do here at the sentencing
18 hearing?

19 A. I think he is trying to save his life.

20 Question. What physical feelings, if any
21 can, you recall, sir? Is there anything that before that
22 happened -- is there anything that you --

23 Answer. Well, as I said before, the
24 thought of wanting to kill just for the sake of killing
25 was not in my mind. I am not a killer. I have been made

1 look bad, as being the worst man on earth. But I am not
2 a bad man. I am a good man. But then, you know, since I
3 have been living, you know --

4 Question. My specific question, Mr.
5 Jones, what thoughts do you recall, if any, that were
6 going through your mind at the time apparently they were
7 stabbed?

8 His answer is not responsive to the
9 question and it is more a self-serving statement that I
10 am a good man. He is trying to convince the jury he is.
11 That is probably appropriate, but wasn't responsive.

12 Answer. The only thoughts that I can
13 really actually remember was, you know, the children --
14 other than that, you know.

15 What he is saying there, the only thing I
16 can remember was the children. That is pretty clear.

17 What about the children?

18 Answer. I mean, I got a little bit of
19 morals in me. I mean, how can you sit up in your house
20 and let all kinds of people come up in your house around
21 little bitty people that grow into big people? By the
22 time they get into big people, they ain't no more good.

23 Again, reflecting what he was really
24 thinking at the time. This is right at the time of his
25 trial, about the children.

1 Question. Do you recall picking up the
2 butcher knife, knife that resulted in their death?

3 I don't remember, you know, too much
4 about --

5 What is the next thing you remember on
6 this situation, Mr. Jones?

7 Do you remember being pulled off Norma
8 Jean Norman by Harold Devalle Miller?

9	Answer.	No.
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10 Take your time and tell us what is the
11 next thing you have at this time a memory of, that
12 occurred over at Mr. Patrick Daniels' home.

13 Pause. The only thing I can recollect is
14 that when I was over there on this young lady in realized
15 that what I was doing -- I had stopped. The purpose to
16 me, you know, I didn't want-- go over there to hurt
17 nobody. But it was her I seen underneath me that made me
18 stop. And God spared her life. And after that I left.

19 Where did you go?

20 Went back to Mr. Miller's house.

21 Question. Did you realize at the time
22 someone was dead?

23 Answer. I did not know anybody was dead
24 in the the next following day when I seen it on the news.

25 The issue there is that he does remember

1 being on top of her. He does remember that he stopped.
2 That is consistent with everything he ever told me.

3 That is the last thing he remembers until
4 in the car half a mile away from Miller's house.

5 Q. Going over to page 1893.

6 A. Question. You heard Mr. Miller testify from the
7 very seat you are in right now that you were the man that
8 stabbed Mr. Daniels to death and you knew it when you
9 were sitting there it was true, didn't you?

10 Answer. That I was the man, yes.

11 Question. And you knew Mr. Miller was
12 telling the truth when he told this jury, even though Ms.
13 Norman was blindfolded and couldn't tell which one of you
14 stabbed her, you knew he was telling the truth, right?

15 Answer. That I was if man, yes.

16 Again he has been convicted, blood on the
17 pants and he believes because of what Miller said he must
18 have been the one that did it.

19 THE COURT: Where does it say anywhere in
20 here about blood on the pants?

21 A. That was in all the records. I was asked to
22 comment what I have known about the case and how this
23 fits into it.

24 THE COURT: I think it is very misleading
25 to keep talking about the transcript and blood on the

1 pants.

2 I don't recall any trial testimony about
3 blood on the pants. Anybody recall any?

4 MR. BAKER: No, Your Honor.

5 MR. MACLEAN: No, there wasn't any in the
6 trial. We never said there was.

7 THE COURT: Well, this doctor keeps saying
8 that is a big part of his analysis, and that is fine.
9 But, I mean, the way he is testifying about this is as if
10 Mr. Jones had said Harold Devalle Miller said I did it
11 and I had blood on my pants and I must have done it.
12 That isn't what this says.

13 MR. MACLEAN: Right.

14 THE COURT: I want to make the record
15 clear, that is not in the trial transcript. There may be
16 other inferences to be drawn from that.

17 Let's keep this straight about the sources
18 of information and the points and time. I just think it
19 makes the transcript look misleading.

20 Q. Let's clarify that point. What gives you the
21 impression --

22 THE COURT: In fact, there is no testimony
23 Mr. Jones was told there was blood on the pants or
24 wasn't. There is nothing in the record on that point.
25 His lawyer testified he didn't know it.

1 MR. MACLEAN: There is a document in the
2 MTMHI file which they report a discussion about blood on
3 the pants. That was in January, February of 1987.

4 THE COURT: Report to who?

5 MR. MACLEAN: It was a report in the MTMHI
6 file.

7 THE COURT: All the testimony to this
8 point is that Mr. Barrett didn't know about it so Mr.
9 Barrett couldn't have told Mr. Jones, no testimony that
10 Mr. Jones knew about it and no testimony from Mr. McAlpin
11 he had it and gave it to Mr. Jones.

12 So, there is absolutely no proof in the
13 record that Mr. Jones was told that they found blood on
14 his pants.

15 This witness keeps saying that as if that
16 is a fact.

17 If you can establish that as a fact, let's
18 do it. But at this point it appears to be a non-fact.

19 MR. MACLEAN: Okay.

20 THE COURT: I think it is just misleading.

21 If you have it, let's put it in. If not,
22 he needs to back off that and quit saying that Mr. Jones
23 believed that he was found with blood on the pants.

24 MR. MACLEAN: Okay.

25 Q. Go ahead, Dr. Sadoff.

1 A. I apologize, Your Honor.

2 Question. And you knew he was also
3 telling the truth as you sat here and listened to him
4 testify, you knew he told this jury the truth when he
5 said you were the man that stabbed Norma Norman. Isn't
6 that correct?

7 Answer. To that question, yes.

8 And you knew, even though your lawyer was
9 up here trying to make Mr. Miller look like a liar to
10 this jury and while your lawyer was trying to make this
11 jury disbelieve him, that he was telling the truth, as to
12 the fact that you murdered Mr. Daniels, and you tried to
13 murder Ms. Norman. You knew that?

14 Answer. You -- you're --

15 Question. You knew he was telling the
16 truth when he said you were the man that murdered --

17 To -- telling the truth to the point of
18 what you asked me -- or telling the truth to the point of
19 how he gave his statement?

20 Question. The way he testified that you
21 murdered Mr. Daniels?

22 Answer. The answer, you know -- I am the
23 man that committed that particular incident.

24 Question. That is what this whole case is
25 about, were you the man that committed this incident?

1 Answer. But you keep saying he is telling
2 the truth, you know, and all the truth wasn't the truth.

3 That is the first hint I have got that he
4 isn't so certain.

5 Question. Now, you seem to still disagree
6 with what Mr. Miller says happened, though, don't you?

7 Answer. It should be answer. It is a Q.

8 To what respect?

9 You seem to disagree that Mr. Miller said
10 you all went over there on Sunday night to try to rob
11 this guy and steal his dope, and you were going to be
12 supposed victim of that fake arm robbery. You deny
13 that?

14 I totally disagree with that.

15 Yes, sir. I understand you disagree with
16 it. But you deny you ever went over there with Mr.
17 Miller?

18 Answer. Yes, I do.

19 You deny you gave Miller your shotgun
20 after you smoked a few joints, is that correct?

21 Answer. That is correct.

22 Question. That was just something, what,
23 that Mr. Miller just dreamed up?

24 Answer. That is something you really have
25 to ask him because I really don't know why he said

1 that.

2 Again he is now disputing some of the
3 things that Miller had said.

4 Question. Now, when you stabbed Ms.
5 Norman, were you trying to kill her?

6 Answer. I don't know.

7 Again he is not saying he didn't stab her.
8 He doesn't know if he was trying to kill her.

9 Question. You don't know. You don't know
10 if you were trying to kill her or not?

11 Answer. I do not know.

12 Question. You took this knife and you
13 stabbed her, stabbed it in her all the way, that far,
14 isn't that true?

15 Answer. If I did then that is true.

16 Again the continued doubt in his mind that
17 that is what he did.

18 Question. Do you mean to tell us today,
19 right now, you're saying that you're not sure if you did
20 that?

21 Answer. I am not saying that.

22 Question. So you admit you stabbed her
23 and you know from all the proof that the knife went into
24 here all the way twice, and left in her just with the
25 handle sticking out, right?

1 Answer. As I learned from the information
2 you have given, yes.

3 Not admitting it himself but what he
4 learned.

5 Question. You want this jury to believe
6 you don't know if you were trying to kill her or not?

7 Mr. Camp. May it please the Court, I am
8 going to object to the question being improper, as to
9 what he wants this jury to believe. He can ask him
10 whether or not it happened. He can ask him so, but I
11 object to the form of that question.

12 The Court. I think it is appropriate.

13 Mr. Zimmermann. Thank you.

14 And you want this jury to believe, Mr.
15 Jones, that you don't know -- don't know, if you were
16 trying to kill her or not?

17 Answer. In my heart, I do not know.

18 So, I read that is consistent as to what I
19 testified to, that he had some doubt and question about
20 what happened. He had memory problems.

21 Q. You mentioned before that to try to learn more
22 about this, you conducted a hypnosis of Abu-Ali, is that
23 right?

24 A. Yes.

25 Q. And was that a videotaped hypnosis?

1 A. Yes.

2 MR. MACLEAN: Your Honor, we have the
3 videotape hypnosis right here. Before I offer it into
4 evidence, let me ask Dr. Sadoff a couple questions about
5 that.

6 Q. Explain to the Court again why you conducted the
7 hypnosis.

8 A. Okay. Because of the history of Abu-Ali, because
9 of the diagnosis, because of the repeated episodes of
10 blackouts or dissociated events in his life, it was my
11 hypothesis this could have been a dissociated event at
12 the time because of the stress of where he was, what
13 he was doing and his fears that went back to his
14 childhood about the children and animals and so on as he
15 told it.

16 I wanted to try to get a higher degree of
17 confidence in that hypothesis. I wasn't there, I don't
18 know what happened. Nobody knows what happened except
19 those that were there.

20 So, in order to properly assess this whole
21 situation, I have done this before. It is standard
22 procedure to try to bring back lost memory that is not
23 lost because of brain damage or intoxication but lost
24 because of emotional difficulties.

25 Hypnosis is a way to do that.

1 I must add that what you get is not
2 necessarily fact. What you get is what the person brings
3 you at the time, and he may believe that was true. But,
4 you know, there is a difference between truth and fact.

5 I am not alleging what we got was based on
6 any fact but only on what his memory gave to him under
7 the circumstances and during the hypnosis.

8 Because between the time of the events in
9 question and time of the hypnosis was many years and much
10 information went into his mind that could have been
11 distorted, could have created certain feelings or
12 memories that he didn't have 12 years ago. So that is
13 important to say.

14 Q. Dr. Sadoff, what is confabulation?

15 A. Confabulation, one sees with organic brain damage
16 where a person will fill in gaps. People don't like to
17 know that they are losing their memory and so somebody
18 asks them a question they will give an answer even though
19 it is not true but just to give an answer because they
20 feel about it.

21 Q. Is there a phenomenon that a patient will
22 manufacture a memory they believe is true even though it
23 may not be representing true objective feeling?

24 A. Yes. My wife tells me I rewrite history. She
25 says I was there and doesn't remember how you are

1 telling it. I think it is true exactly how I am telling
2 it. I don't remember. It may be false. I don't do it
3 to lie or to be a malingerer. I think this is what I
4 remember.

5 We all distort and time will distort
6 memories very much.

7 Q. Please describe to the Court what occurred during
8 the hypnosis.

9 A. Okay. We have to preface this with comments that
10 were made to Dr. Dubin before he sat down with Abu-Ali.
11 One is that Abu-Ali is resistant, he will be very
12 difficult to put into a trance because he is borderline
13 and because he doesn't trust, and for a lot of reasons.

14 And I have done this with Dr. Dubin, as I
15 say, many, many times. What he has to do is try to
16 establish instant power -- what we call in the trade
17 transfer -- so there will be a good feeling and maybe the
18 patient will open up to Dr. Dubin and trust him a bit.
19 Because, after all, he is doing a procedure, a total
20 stranger doesn't know him and hasn't seen him before.
21 This is going to be especially difficult.

22 With that in mind, Dr. Dubin approached
23 meeting Abu-Ali being very personable and trying to share
24 certain feelings he has about children, animals and
25 family, et cetera. That is shown on the tape.

1 I wanted to explain why it is there.

2 But what happened was that Dr. Dubin, who
3 is very experienced with this and easy to talk to, sat
4 down. I was in the room, Dr. McCoy was in the room and
5 the videographer was in the room. You, Mr. MacLean, and
6 Redick were there to introduce us to, give Abu-Ali
7 confidence that Dr. Dubin was working with him and wanted
8 this done. They left.

9 Dr. Dubin sits and talks with them and
10 takes the history and establishes a rapport. What he is
11 trying to do is, what do you remember? Let's have it on
12 this unerasable tape.

13 What do you remember about the incident in
14 question? Tell me everything you remember without
15 hypnosis so we have it side by side with what you are
16 going to tell me after I put you under hypnosis. He does
17 that. And then he inducts him. I forget the technique
18 but it took a little while.

19 As I recall Abu-Ali kept his eyes open
20 fairly long. That was to be expected. You close your
21 eyes, you are at someone else's mercy and more
22 vulnerable.

23 Eventually he closed his eyes and went
24 through the experiences. We tried to have a person
25 relive those experiences to thereby -- and rather than

1 narrate what happens. Sometime they can do it and
2 sometimes they can't.

3 I think he was able to be there for awhile
4 and sometimes he narrated as you will see as you watch
5 the tape.

6 Under the influence of the hypnosis -- and
7 again it should be noted very clearly, we don't know that
8 Abu-Ali was in trance. We don't know if he was
9 hypnotized. We think he was in an altered state of
10 consciousness but he was different than what he was
11 before the induction of hypnosis.

12 And then he gave what he said under
13 hypnosis most of which was identical to what he said
14 without hypnosis. Except when he got to the part where
15 we had this discreet time lapse for him putting the duck
16 tape on Norman Norman and being in the car a half mile
17 from Mr. Miller's home.

18 He was under hypnosis or whatever at the
19 time to give us information he was not able to give
20 before.

21 Was it memory, was it truth, fact? I
22 don't know. I can't tell you. It was there and
23 different. Something he never told anybody before.

24 Q. When he was in this altered state of
25 consciousness, I believe you put it, what did you observe

1 about his demeanor that led you to conclude he was in an
2 altered state?

3 A. He spoke differently. You can tell from the
4 reading of the transcript there was kind of a
5 circumstance he doesn't get to the point and uses words
6 sometimes not appropriate for the particular meaning he
7 is trying to convey.

8 Under hypnosis he was more direct and
9 relaxed and more freely and shorter sentences and simpler
10 words. When he got to certain areas his affect was much
11 more powerful.

12 He would show much greater feeling with
13 respect to things he was talking about. Sometimes this
14 is called aberration. That is what you are looking for
15 when you are trying to capture lost memory.

16 Q. Dr. Sadoff, in your opinion, your professional
17 opinion during this process did Abu-Ali believe what he
18 was saying was true?

19 Did he believe this was a memory of
20 his?

21 A. Yes, in my opinion.

22 Q. What do you base that on?

23 A. The way he told it and the affect and the way he
24 responded afterwards that he was appalled and amazed he
25 had been betrayed the way he was. It seemed to be a

1 reaction that would be difficult to fake.

2 Q. Briefly describe to the Court what it was he
3 related?

4 A. He related he recalled being in the room as he had
5 before and that he was standing there and thinking about
6 the children and then he saw out of his eye a kind of
7 blur and he saw Miller and something in Miller's hand and
8 realized it was a knife.

9 He positioned himself between Miller and
10 the door where the children were behind to protect the
11 children and saw Miller's hand go up and down.

12 He can't say for sure he saw the knife go
13 into anybodies' body but he presumed when he saw that
14 happen in his memory -- that is that is what happened --
15 and believed it was Miller that did the stabbing and not
16 he.

17 Q. How did this information from the hypnosis
18 contribute to your view of the case, view of Abu-Ali?

19 A. What it did was it told me there was a period of
20 time for which Mr. Rahman did not remember, it was a
21 dissociation we were able to break through with the
22 hypnosis; without giving credence to the substance what
23 he said under hypnosis but he was able to have some
24 memory he had never told anybody before but with hypnosis
25 he could then communicate it.

1 Whether it was remembered, whether it was
2 in the forefront of his mind or in the dark recesses of
3 his mind, I don't know.

4 But it told me that I was correct in my
5 presumption in was a dissociation at the time Mr. Daniels
6 was killed.

7 Q. We arranged for the videotape of this session and
8 I have in my hand a videotape of that session, is that
9 correct?

10 A. Yes, you must be.

11 MR. MACLEAN: Your Honor, I move this into
12 evidence and ask the Court to look at the videotape, not
13 perhaps the whole thing but go through it and let Dr.
14 Sadoff explain what he observed during that session.

15 THE COURT: For the record, I have viewed
16 the video tape because of the motion in limine. I have
17 seen the whole thing. Having said that --

18 MR. BAKER: I want to clarify our position
19 on that. For a limited purpose of demonstrating what he
20 relied upon to form his opinion, no objection.

21 We object for its use for any other
22 purpose as hearsay.

23 THE COURT: Let me see if I understand
24 you. You are objecting to the introduction of the
25 videotape for purposes of asserting what Mr. Rahman says

1 in the videotape is true. But you don't have an
2 objection on what basis?

3 MR. BAKER: For demonstrating what this
4 doctor has relied upon in formulating an opinion, that
5 limited purpose, no objection.

6 For any other purpose, for including this
7 as substantive truth of anything stated, we would object
8 on the grounds it is a hearsay statement.

9 THE COURT: You have no objection to it
10 going into evidence as an item of which the witness has
11 relied upon for forming his opinion?

12 MR. BAKER: Your Honor, we have no
13 objection to its admission as demonstrating what he has
14 relied upon in his opinion. We have no objection to
15 that.

16 We object to its use for any other
17 purpose. There are some things I want to refer to in it
18 with regard to this expert. But for any other purpose,
19 my primary concern to use this as substantive proof of
20 what this witness would say in support of his claim, we
21 would object.

22 It is simply a piece of information that
23 this doctor has relied upon and it is relevant to that
24 issue only.

25 THE COURT: What is it being offered

1 for?

2 MR. MACLEAN: Just for that purpose alone.
3 Just exactly for the purpose that the state has no
4 objection to, as something that Dr. Sadoff looked at and
5 used in forming his opinions, not to offer it to prove
6 the truth of the matters asserted in the videotape.

7 THE COURT: Let me ask the doctor a couple
8 questions.

9 Has the theory or technique of hypnosis
10 been tested in terms of its reliability for determining
11 whether there can be recovery of lost memory as you seem
12 to suggest?

13 A. It has been tested but never shown what the memory
14 that comes up is factual or not. But it does bring back
15 some memories that people have and can be used for that
16 purpose.

17 THE COURT: You're saying it can bring
18 back a memory of a fantasy someone may be having?

19 A. Yes, it could.

20 THE COURT: Or eventually bring back a
21 thought memory?

22 A. Yes.

23 THE COURT: Has there been any kind of
24 peer review or publications on this issue?

25 A. There have been. Especially Dr. Martin Horne who

1 is also teaching at the University of Pennsylvania and he
2 was the person who wrote the specifics for the case of
3 State versus Hurd in New Jersey about 15 years ago.

4 Most of us follow those recommendations
5 and guidelines that he set down. I think he was the
6 world's expert in this.

7 He has been very critical of the use of
8 hypnosis in cases of this type. But clearly one can
9 bring back memory. The theory is state dependent
10 learning, if somebody has an experience in a particular
11 state of consciousness and then changes that state.

12 In the normal state it goes into a
13 dissociation with something that happened, does not
14 remember when he returns to the normal state. Then by
15 putting that person in the altered state they can
16 remember what happened, when they can't remember when
17 they are awake.

18 That has been shown to be fairly valid and
19 people can bring back memories from one state to another.

20 I don't know if they are fantasy, truth or
21 lies.

22 THE COURT: What is the known or potential
23 rate of error?

24 A. That I can't tell you. I don't know.

25 THE COURT: Has anybody studied that?

1 A. They may have but I don't have that data.

2 THE COURT: What is your view of the
3 degree of acceptance in the relevant scientific
4 community?

5 A. It has its problems. I think most people that
6 don't have much experience with it have problems in
7 accepting what people say.

8 The use of hypnosis for other purposes, it
9 is much better accepted for anesthesia during operations,
10 getting rid of nausea when cancer therapy is used.

11 There are many purposes that hypnosis has
12 in medical areas that are used every day.

13 As far as bringing back memories in cases
14 like this where there is a criminal case and a person has
15 a particular agenda himself and there may be secondary
16 issues that have to be considered because he is involved
17 in a criminal case, I think people don't feel it is
18 reliable as it would be for other purposes.

19 THE COURT: At this point the tape is
20 being offered for the limited purpose of establishing
21 what the witness relied upon or not relied upon. The
22 state has not objected to that.

23 So it will be allowed into evidence for
24 that limited purpose.

25 It is not being offered or admissible for

1 the truth of what is on it. I decline to admit it for
2 that purpose.

3 A couple cases that give me some concern
4 in that regard, United States versus McCullum, 732 Fed
5 Second, 1419. That is a Ninth Circuit, 1983 case. And
6 United States versus Mest, 780 Fed Second, 1069, a Fourth
7 Circuit case.

8 I think that these cases express a concern
9 I have which is back door testimony by someone who is not
10 subject to cross-examination.

11 And since it is not being offered for that
12 purpose, I don't have to make a ruling on that.

13 In any event, it is not admissible for
14 that purpose.

15 The four sets of questions I just asked
16 the witness, Dr. Sadoff, is the test understand Daubert.
17 Based upon what he has just told me, it does not appear
18 it would satisfy Daubert.

19 There may be a basis out there in the
20 scientific community. It may ultimately become provable
21 that hypnosis does satisfy Daubert. But it is not in the
22 state of the record as we speak. I wanted to satisfy
23 myself in that regard.

24 Of course, if the tape comes to be offered
25 for other purposes, I would expect the parties to address

1 those issues.

2 I wanted to set out those thoughts so you
3 knew what I was thinking.

4 At this point I don't think it is
5 necessary to show the tape.

6 MR. MACLEAN: I don't intend to, if Your
7 Honor already viewed it. I don't intend to use up the
8 Court's time.

9 THE COURT: I have reviewed it from front
10 to finish. I want the record to be clear on that.

11 I saw Dr. Dubin. He related that he had
12 not attended some of his children's graduations to be
13 there for that important event. He talked of his love of
14 his domestic animals. I saw Mr. Jones' reluctance to
15 close his eyes. I saw Mr. Jones repeatedly say blame it
16 on me or words to that effect. I saw Mr. Jones come out
17 of what has been described as his altered state of
18 consciousness. I think I picked up all of what needs to
19 be in it.

20 I am not trying to prevent you from
21 examining the witness. If there is a particular
22 important point, I am not necessarily going to exclude
23 you from playing it. I don't think it is necessary to
24 play -- if I recall it is around two hours.

25 MR. MACLEAN: Two hours, Your Honor.

1 THE COURT: I didn't time it exactly.
2 There is frankly a fair amount of dead time on it.

3 So, I am not going to preclude any
4 examination of it by either side of this case. Just like
5 we don't need to read the entire transcript of the trial
6 in the state court, we can take excerpts. If it comes to
7 that, we can take excerpts from this. I have looked at
8 it.

9 If I feel like I am having some memory
10 loss or disassociating about it and I need my memory
11 refreshed, I will tell you. I have a few virtues. I
12 have a pretty good memory. I believe I can follow it.
13 With that background, you may proceed.

14 MR. BAKER: May I make a point in regard
15 to the Daubert matters you spoke to. This is a federal
16 habeas proceeding and we are evaluating what happened in
17 the state court proceedings and what would have perhaps
18 of happened if this man testified in state court.

19 We have concerns about, of course, the use
20 of hypnosis and I will discuss some of that with the
21 doctor on cross-examination. But one of the reasons we
22 wanted it entered with this expert for use is that we
23 have to evaluate the case in what would have happened in
24 the state court.

25 For purposes of the this hearing, we want

1 it to come in. We certainly have great concerns about
2 the use of hypnosis in these matters.

3 It is that context we want the evidence in
4 the record in this proceeding, not that it has any
5 credibility or hypnosis is a proper --

6 THE COURT: I am confused by that.
7 Without regard to what happened in the state proceedings,
8 Federal Rules of Evidence apply here. My determination
9 about the admissibility of evidence is based upon the
10 Federal Rules of Evidence.

11 Frankly, it doesn't matter what the state
12 rules are if it was admissible in state court. That is a
13 whole different issue.

14 Now, once something is admitted in a
15 federal habeas proceedings the weight to be given to it
16 may depend on state rules. An example would be if the
17 state court findings presumed to be correct -- I am not
18 suggesting it in this particular instance -- but that can
19 affect the evaluation or weight of the evidence.

20 Perhaps it is better to say evaluate the
21 evidence rather than the weight of the evidence as it
22 relates to the state proceedings.

23 But federal courts are the exclusive
24 judges of matters in federal trials. I want it clear
25 that my ruling is based on the Federal Rules of Evidence

1 and Daubert is fundamentally based upon that and the Frye
2 test before it, et cetera.

3 I am not sure I understand that statement.

4 MR. BAKER: Maybe my position is in error.
5 But if the Court believes the evidence is not admissible
6 and doesn't meet the Federal Rules of Evidence, we object
7 to the evidence.

8 THE COURT: You have objected to the
9 evidence as substantive evidence and you have stated that
10 you have no objection to it being in the record for the
11 limited purpose of showing that Dr. Sadoff considered it
12 along with scores of other things, I think it would be
13 fair to say.

14 So it has been admitted for that purpose.
15 I guess I am missing something.

16 MR. BAKER: I guess maybe I can clarify.
17 What I was trying to say, I am assuming what they are
18 trying to show here is what his defense attorneys should
19 have put on in state court. I assume what they are
20 saying they could have put on someone like Dr. Sadoff to
21 testify as he testified here.

22 If that helps the Court understand our
23 position on that matter -- it may have some relevance,
24 although the credibility and use of hypnosis, we think,
25 is subject to question. It is in that context we believe

1 it should be admitted.

2 THE COURT: Now I follow you.

3 MR. BAKER: I am sorry if --

4 THE COURT: What your suggestion is even
5 if Dr. Sadoff or someone in his shoes had been called at
6 sentencing or at the trial of the guilt or innocence
7 phase it is going to be your position that the state
8 courts would not have admitted that evidence and,
9 therefore, even if there had been a offer it would have
10 been rejected. If it was rejected there is no error and
11 Mr. MacLean is going to turn that upside-down and will
12 say if it was offered it would have been admitted.
13 Because it wasn't admitting there is error --

14 MR. BAKER: Yes.

15 THE COURT: What Dr. Sadoff would say,
16 that there is no gray area, it is either black or white,
17 along those lines, the extremes.

18 I don't have the answer to that question.
19 I don't know the answer to that. I am sure both of you
20 will enlighten me. I don't know what the state courts
21 would do.

22 I am concerned about in a federal case the
23 evidence being offered as perhaps a device to avoid
24 cross-examination and it's inherent out-of-court nature
25 and certainly if it was being offered for the truth

1 thereof -- and I have concerns about the Daubert test,
2 and what is the current state of the record that it
3 doesn't meet Daubert. I am not saying it never would. I
4 am basing it on what I currently know.

5 Neither of you really developed that.

6 I felt duty-bound to ask those questions.
7 It is sure frustrating for all of you that I keep asking
8 questions. That is my job.

9 MR. MACLEAN: If I could have this marked
10 Exhibit 139.

11 THE COURT: We will mark it 139.

12 This is probably a good time to take a
13 brief comfort break and let the witness stretch his legs
14 for a minute. Let the lawyers stretch their legs.

15 We will take about a 10 minute break and
16 we will come back and go at it.

17 (Whereupon, the hearing was in recess.)

18 THE COURT: Are we ready to resume?

19 MR. MACLEAN: Yes, Your Honor.

20 BY MR. MACLEAN: (Continuing)

21 Q. Dr. Sadoff, how long has the use of hypnosis been
22 in place in your field and how long have you used
23 hypnosis for these purposes?

24 A. I think hypnosis has been in place many years,
25 couple decades and I have been using it 15 years or so.

1 Q. Before that you said you used the sodium --

2 A. Sodium amytal.

3 Q. What role did the hypnosis and the tape play in
4 your opinion?

5 A. As I indicated, I asked for it to see if I could
6 raise my level of confidence in my opinion about the
7 dissociation.

8 So it was one test I used among many and
9 it was helpful.

10 Q. Dr. Sadoff, DSM 4 -- and I believe your testimony
11 is that dissociation can occur under stress.

12 In the case of a borderline personality
13 disorder person or a post traumatic stress disorder
14 person, what are we talking about when we talk about
15 stresses and how do they compare to the stresses you and
16 I might experience?

17 A. Because the borderline personality disorder and
18 post traumatic stress disorder person are more vulnerable
19 and less stresses than normal it does not need to be as
20 great to produce the dissociation.

21 Q. Have you reached an opinion about whether James
22 Jones was in a dissociative state at the time of the
23 offense in this case?

24 A. Yes.

25 Q. What is your opinion?

1 A. My opinion he was dissociated at the time of the
2 offense.

3 Q. Explain the reason for reaching that opinion.

4 A. Because of his diagnosis, the kind of person he
5 is, the history he gave and the information that I have
6 about his state of mind at the particular time which
7 indicated he had a discretionary memory loss for the time
8 of the actual stabbings.

9 Q. And what would have been the stresses in your
10 opinion that could have triggered those?

11 A. The stressers for him were that he was on a
12 mission, it was war -- and he said this many times --
13 this was a war he is engaged in against the drug
14 dealers.

15 But the real stress for him was his
16 boundary confusion in identifying with the two girls in
17 the room in the house, that they were being victimized by
18 this black man with Jeri curls and his wife. The king
19 and queen he once referred to them, that they had
20 responsibility for the two girls, and he had been abused
21 when he was their age and younger and identified with
22 them and came furious that they were going to be abused
23 and had been and also the animals, two dogs there that
24 he recalls they were in danger at the hands -- he
25 believed -- of Miller who he said threatened to kill

1 them.

2 Those two items caused him to fear that
3 something drastic was going to happen to the children and
4 to the animals. He couldn't let that happen. It was in
5 a state of anxiety because of it.

6 Q. All right. I want to ask you about some issues
7 that have come up.

8 On the one hand James Jones claimed to
9 have been on a mission to rid the community of drugs and
10 other hand he took marijuana and possibly LSD.

11 How do you explain that in light of his
12 problems?

13 A. Of course, I asked him about that, too. He makes
14 a distinction between those medicines or drugs like
15 marijuana, LSD, psychedelics, peyote, mushrooms that are
16 used by the Indians for spiritual purposes and medicinal
17 purposes and hard drugs like cocaine and heroin and speed
18 that he has never used and won't use and that are more
19 harmful.

20 He again, like a good borderline, will say
21 to myself these are good and these are bad. No shade of
22 gray.

23 Q. There are reports in the early prison records he
24 may have taken some of these heavier drugs such as
25 cocaine and heroin earlier on.

1 How do you explain that in comparison to
2 what he was telling you and what he told others?

3 A. He may have taken them. He may be lying about not
4 taking them or having not taken them. That is before he
5 had his conversion by the Sioux Indians.

6 His realization there were some good drugs
7 and bad and as a borderline, they abuse drugs. That is
8 part of what they do.

9 Q. This business about the children, there was
10 testimony in the trial by Norma Norman he threatened to
11 do harm to the children if they weren't put in the back
12 room, or something to that effect. How do you explain
13 that?

14 A. He, of course, says that didn't happen. If it
15 did, in my opinion it would have been part of his persona
16 that he was adopting, he was Scar Face from Chicago and
17 he was there to intimidate, and part of the comment he
18 could make is keep the kids quite or they will get it,
19 too.

20 I don't think he meant it if he said it.

21 Q. The persona, how does that relate to the
22 borderline personality or post traumatic stress
23 disorder?

24 A. That was the identity he was assuming to carry out
25 his mission, that he had to intimidate, he had to be the

1 gangster to these people to get them to submit so he --
2 his whole persona with the coat and gun and Scar Face
3 from Chicago and threatening is all part of his
4 intimidation process.

5 Q. In the state court proceeding Judge Kurtz pointed
6 out that Devalle Miller testified at the trial that
7 before they went over there James Jones made some
8 comments about how they wouldn't leave any witnesses or
9 something to that effect, suggesting there was some idea
10 ahead of time that life would be taken.

11 How do you deal with that? How do you
12 explain that?

13 A. I asked him about that. He said that is patently
14 false, it never happened that way. It is not something
15 he ever has done or would have thought of doing.

16 Q. In reviewing the records, did you review any
17 records to try to look in to that?

18 A. I did. I think there was an initial statement by
19 Miller that wasn't the case and later when he -- I
20 guess -- wasn't granted immunity but made his agreement
21 with the D.A.'s office, he made that statement.

22 So it is not the same as his earlier
23 statement.

24 Q. The testimony in this case is when Mr. Jones
25 talked to his lawyer and also when he talked to the

1 people at MTMHI, he explained what happened by using a
2 person by the name of Blackstock and this was apparently
3 not a true description of what occurred.

4 How do you explain that?

5 A. He lied. I think he was being defensive. He
6 wanted to tell them something that wasn't true so they
7 wouldn't think it was he. I don't know if he believed
8 that. I don't think he did.

9 It was just his way of telling them it
10 wasn't me, it was somebody else.

11 Q. There was testimony by Mr. Devalle Miller that
12 James Jones was cool and also there is some suggestion
13 maybe there was a description of James Jones after the
14 fact that he was cool.

15 What is your explanation to that?

16 A. It depends on what he means by cool. It sounds
17 like from what I read everything -- he was in control, he
18 took over and in charge, Miller couldn't handle it.

19 So that he assumed again that role that I
20 am in charge, I am going to do it this way and I can't
21 trust you, Miller, because you are too shaky.

22 Q. Is that consistent with a dissociate state?

23 A. Yes. It could be a transitional state during his
24 dissociation, yes.

25 Q. Based upon your work in this case, your review of

1 the records, your examinations of Mr. Jones and all of
2 the other things you have done in this case, do you have
3 an opinion on whether James Jones was sane or insane at
4 the time of the offense?

5 A. I do have an opinion.

6 Q. What is your opinion?

7 A. My opinion is that assuming he had a dissociation
8 at the time and for the reasons I gave in terms of his
9 anxiety about being victimized and identifying with the
10 two girls and with the animals who were being threatened,
11 that he lacked substantial capacity to conform his
12 conduct to the requirements of the law if, in fact, he
13 was the one that did the stabbing.

14 Q. Have you reached an opinion based upon your review
15 of Tennessee law and your work in the case on whether at
16 the time of the offense James Jones could have acted with
17 premeditation and deliberation?

18 A. I do have an opinion.

19 Q. What is your opinion?

20 A. My opinion is if the incident is as he described
21 it and as I have read all the records and there was not
22 the statement made that we are not going to leave any
23 witnesses, and knowing that they had guns but they were
24 not used in the killings but that a knife that was found
25 in the house and not brought by them, that there never

1 was one that was -- based upon my opinion there was a
2 dissociation where he had difficulties controlling
3 himself, that he could not at that time have deliberated
4 or committed the killing of either of them.

5 Q. If in fact James Jones went to the kitchen as has
6 been alleged and has been testified to by Mr. Miller,
7 picked out a knife and then went back and conducted the
8 stabblings, is that consistent or inconsistent with your
9 opinion that he did not premeditate and deliberate?

10 A. It is consistent, yes.

11 Q. Explain that, please.

12 A. Because if he is in a dissociated state people who
13 act purposefully and deliberately in their dissociated
14 state, not a normal state, he is not in his regular state
15 of mind and not acting in a deliberate conscious.

16 My understanding of the interpretation of
17 the word purposeful or premeditated is consciousness of
18 the person's wishes. He was not acting in a conscious,
19 deliberate fashion but he was within his altered state,
20 one with purposeful acts.

21 Q. Dr. Sadoff, there is information in the record
22 that James Jones has a history of getting into trouble,
23 of getting into fights, of sometimes engaging in violent
24 activity.

25 How does that fit in with your diagnosis

1 and with your picture of James Jones and how it may
2 relate to his childhood?

3 A. All that I have read indicates that his behavior
4 was related to his relationship to his father. Early on
5 at age 10 and 12 he was doing it to get back at his
6 father, doing antisocial things.

7 His father was, I think, an MP in the
8 military.

9 Then he would run away. Because he was
10 feeling small feminine and vulnerable and picked on by
11 older bigger guys. He fought back. He got into a lot of
12 fights.

13 Even according to his brother Mark in his
14 affidavit said that he would act out some of the TV shows
15 he was watching with his sister and sometimes would go
16 out and get violent with some of the neighbor kids. That
17 was part of his, again, new identity.

18 It is a compensation for being small and
19 vulnerable, now I am a tough guy, a gangster. I can do
20 this and beat up on kids.

21 It fits his personality disorder and fits
22 antisocial features. I can't deny that. But it fits the
23 borderline problem.

24 Q. You testified to the information about childhood
25 abuse and about the difficult life he led and lack of

1 maternal care.

2 Based upon your review of this life, were
3 you able to identify any positive factors in his life,
4 positive influences from the outside that most people
5 would have?

6 A. In his early life, no. The only positive thing
7 was in his own fantasy, own imagination and animals he
8 befriended. They were positive for him. That was a very
9 important part of his adjustment, that he could find some
10 solace in his solitude.

11 And maybe the first person that really
12 befriended him and helped him were the Sioux Indians who
13 he could identify with and the Quaker lady in Chicago,
14 and then other groups, even the SEGM that offered him a
15 place. They were positive things but came later.

16 Q. Dr. Sadoff, these disorders you talk about
17 borderline personality disorder and post traumatic stress
18 disorder, are these problems that a patient has any
19 control over?

20 A. Well, I like to think we all can, I suppose, under
21 certain conditions control our behavior. That is what
22 the goal of therapy is all about.

23 But those that have not had therapy,
24 there is no awareness, no conscious awareness of what
25 they are doing, what their purposes are. They do

1 them because this is part of who they are and what they
2 are.

3 So when you say control, I suppose
4 ultimately they would have some control. Until they get
5 therapy, they are the victims of their own illnesses.
6 This is how they adjust to society.

7 Q. Did they have control over the creation or
8 anything of the illness in early life?

9 A. They did so only in the sense they were using
10 these tenuous controls as a means of defending against
11 the stresses of the environment.

12 When father comes down on me, I
13 dissociate. When people are too nasty and mean, I go out
14 in the woods and talk to my friends the animals. When
15 people pick on me and I think they are evil and bad, I
16 will fight back and hurt them before they hurt me.

17 Q. When he was a child, other than creating some
18 construct in his mind or other than escaping out in the
19 woods, in his family environment did he have any refuge,
20 place to seek comfort and safety?

21 A. Outside of what you mentioned, I didn't find any,
22 no.

23 Q. At the closing argument the prosecution in this
24 case argued to the jury that James Jones committed the
25 offense for, quote, pure pleasure, end of quote.

1 Did you find any evidence based upon your
2 evaluation that James Jones committed any offense at the
3 time of the offense in this case for pure pleasure?

4 A. I didn't find that at all. I don't think he even
5 enjoyed it at all, even if he was aware of what he was
6 doing.

7 Q. The prosecution argued to the jury that James
8 Jones is wicked, evil, cold blooded, calculated.

9 Is that your view of James Jones based
10 upon your evaluation of him?

11 A. I don't see him that way at all. He may have
12 certainly demonstrated some of those qualities earlier in
13 his life but they have to be balanced by other qualities
14 as well.

15 I didn't see those when I examined him.

16 Q. They said you are looking at a depraved man, not
17 someone suffering from severe, extreme emotional
18 disturbance.

19 Is that your view of James Jones?

20 A. I would disagree with that. He was suffering from
21 a very seriously disturbed illness.

22 Q. And isn't emotional disturbance one of the
23 characteristics of borderline personality disorder and
24 post traumatic stress disorder?

25 A. It is of both, yes.

1 MR. MACLEAN: Your Honor, if I could have
2 just a brief moment.

3 THE COURT: All right.

4 MR. MACLEAN: Your Honor, that is all for
5 now.

6 THE COURT: Mr. Baker, your turn.

7 MR. BAKER: Your Honor, would this be a
8 good time to take a break or should we move forward?

9 THE COURT: All right. We can take a
10 lunch break.

11 Be back at one o'clock. Anything else?

12 (Whereupon, the Court was in recess.)

13 THE COURT: Ready, Mr. Baker?

14 MR. BAKER: Yes, Your Honor.

15 THE COURT: All right. Let's go.

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EXAMINATION OF ROBERT SADOFF

BY MR. BAKER:

Q. Doctor, when did you first become involved in this case?

A. Probably in the fall of 1996.

Q. How did you become involved in this case?

A. I had a call from the attorney, Mr. MacLean, who asked me if I would be interested in working with him in the case.

Q. How often have you testified in courts in Tennessee?

A. I am sorry?

Q. Testified or been hired to work on cases in Tennessee?

A. I have been hired more times than I testified. I think I have testified on two or three other cases. I probably got another four or five besides that. These are still pending or I worked on that I didn't testify.

Q. Are those criminal cases?

A. They are all criminal.

Q. Are they all murder cases?

A. I believe they were, yes.

Q. Are they all capital murder cases?

A. No, they were not all capital.

1 Q. How many are you working on, any, other capital
2 cases in Tennessee?

3 A. I think I am on two.

4 Q. Who or which parties are you working for in those
5 two cases?

6 A. For the defense.

7 Q. You testified that you had read the records and
8 reviewed the records of the petitioner's prior history,
9 correct?

10 A. That's correct.

11 Q. That would include his prison records and school
12 records?

13 A. Yes.

14 Q. And other records about his past?

15 A. Yes, sir.

16 MR. BAKER: Your Honor, at this time, I
17 would like to offer into evidence defendant's exhibit --
18 I believe we are up to six now.

19 THE COURT: What is it?

20 MR. BAKER: This is a copy of portions
21 of the federal prison records which the doctor has
22 reviewed.

23 THE COURT: All right.

24 MR. MACLEAN: May I see a copy?

25 MR. BAKER: I have also made an additional

1 copy for the Court.

2 These are very voluminous records.

3 THE COURT: If you have a copy for me, I
4 would like to look at it. It increases my understanding,
5 to look at things simultaneous with the testimony.

6 You are offering the entire binder as a
7 collective exhibit?

8 MR. BAKER: Yes, Your Honor.

9 THE COURT: All right. Hearing no
10 objection, it will be admitted.

11 Q. Before I get to the exhibit, I want to review
12 matters that I have found contained in petitioner's
13 records prior to entering federal prison.

14 You have indicated you have seen these?

15 A. I am having trouble hearing you.

16 Q. You indicated other than the federal prison
17 records you have also reviewed other records about his
18 past, school records and what not?

19 A. Right.

20 MR. BAKER: At this time, I would like
21 to offer into evidence admission of Defendant's Exhibit
22 7. This is Defendant's Exhibit 7. These are school
23 records.

24 I have an extra copy.

25 THE COURT: All right.

1 MR. BAKER: I have an extra copy for the
2 Court.

3 THE COURT: Thank you. That will be
4 admitted as number seven.

5 MR. BAKER: I would also like to --

6 THE COURT: Do we have exhibit stickers,
7 and, if so, who has the copy?

8 MR. BAKER: I have made them.

9 THE COURT: The witness has them?

10 MR. BAKER: Yes, Your Honor. I am
11 sorry.

12 THE COURT: That is fine. I wanted to
13 make sure I understood which one had it.

14 MR. BAKER: The next exhibit will be
15 Defendant's Exhibit 8. These are more records.

16 I offer it as Defendant's Exhibit 8, as
17 more records of defendant's, or petitioner's past.

18 THE COURT: What are the nature of those
19 records?

20 MR. BAKER: State of Washington,
21 Department of Social and Health Services records, Your
22 Honor.

23 THE COURT: That will be Exhibit 8.

24 MR. BAKER: Exhibit 9 we offer into
25 evidence the New Jersey State Hospital at Trenton

1 records.

2 That is Exhibit Number 9.

3 THE COURT: That will be Exhibit 9.

4 MR. BAKER: I have a copy for the Court as
5 well.

6 We will offer Defendant's Exhibit 10.
7 These are a portion of petitioner's military records.

8 THE COURT: All right. That will be 10.

9 MR. BAKER: Defendant's Exhibit 11 is
10 records from the Department of Human Services, District
11 of Columbia.

12 Q. Doctor, what I would like to do is review your
13 memory of what is in some of these records and ask if you
14 recall about these documents.

15 Start with his school records that I have
16 marked Defendant's Exhibit 7. They are records
17 indicating that he had attended a Sayer Junior High
18 School and Shaw Junior High School.

19 Do you recall that, doctor?

20 A. This is in Philadelphia, right?

21 Q. I believe these -- Sayer was in Washington
22 State?

23 A. I know I have the school records for Philadelphia.
24 I don't know that I have school records for other
25 jurisdictions.

1 Q. Do you see the -- do you see the document, I
2 believe the second document in that exhibit, a request
3 for psychological services?

4 A. Are you talking about Exhibit Number 7?

5 Q. Yes.

6 A. Second page?

7 Q. Yes.

8 A. I indicated I had seen the school records from
9 Philadelphia. If these are not Philadelphia school
10 records, I probably have not seen them before. I can
11 look at them if you want.

12 Q. Have you seen the reports indicating reference to
13 petitioner, he was found in the girls' rest room by girl
14 students who reported it to a teacher?

15 Have you seen that?

16 A. I knew about that from reading Dr. McCoy's report.
17 I don't believe I have seen these particular records. I
18 knew about it.

19 Q. So you were not aware of the statements in this
20 document that state that student fled the building,
21 junior high school principal pursued the student who had
22 a knife in hand; after a long consultation with the
23 student the principal persuaded the student to drop the
24 knife?

25 A. I knew about that from Dr. McCoy's but I didn't

1 have these in my records.

2 Q. You were aware of that incident when you
3 formulated your opinion?

4 A. Yes.

5 Q. You are aware of the incident where he threatened
6 the boy with a knife?

7 A. Yes.

8 Q. A knife he had stolen from the principal?

9 A. Right.

10 Q. Now, were you aware of the instances of fighting
11 contained in these school records?

12 A. Yes.

13 Q. He had a history of fighting?

14 A. Yes.

15 Q. Were you aware of the record indicating that the
16 petitioner had walked into a classroom, picked up a trash
17 can and threatened other people?

18 A. That doesn't come to my memory. If it is in the
19 records I reviewed of Dr. McCoy, I must have seen it.

20 Q. Are you aware of the memorandum -- this is
21 referring to Philadelphia and Shaw, Shaw Junior High
22 School?

23 A. Page number?

24 Q. Titled Shaw Junior High School, memorandum or
25 letter from the principal?

1 THE COURT: How many pages back, Mr.
2 Baker?

3 MR. BAKER: I believe it is 13. Page
4 13.

5 A. I have it.

6 Q. It says that for the safety of James and other
7 pupils, I believe it is advisable to suspend the above
8 pupil in the custody of his parents?

9 A. That is not on page 13 I have. I have Sayer
10 Junior High School.

11 Q. Do you have Shaw?

12 A. Sayer.

13 Q. Were you aware he was suspended from Shaw Junior
14 High School, if the record reflects that?

15 A. I can't recall seeing that. It is probably in Dr.
16 McCoy's report.

17 Q. You mentioned you were aware he threatened other
18 students while he was in school?

19 A. I am aware of that history, yes.

20 Q. Aware of reports indicating that they described
21 him as a person who hated humans and their social
22 structure?

23 Do you recall that statement?

24 A. What page are you reading from? I have a page
25 number on the bottom of my pages.

1 Q. Let me take you to page 25.

2 A. Is that a handwritten thing?

3 Q. Right.

4 A. Shaw Junior High?

5 Q. Right.

6 A. 3-25-66?

7 Q. Right.

8 Did you see the portions of that statement
9 that describe him as unruly, with no respect with the
10 teachers and students and he was loud and boisterous?

11 A. Yes.

12 THE COURT: Are we still back on the page
13 that says he hated humans and social structure or have
14 you moved on to something else?

15 MR. BAKER: I didn't have that page in
16 front of me so I went on to number 25.

17 THE COURT: Well, I think we need to make
18 the record clear here. I have on page 11 the suspension
19 letter everybody was looking for.

20 I have got on page 16 the reference to
21 humans and social structure.

22 Now, you are going to the one that has
23 date stamped 25?

24 MR. BAKER: Yes, Your Honor.

25 THE COURT: All right. I am there.

1 Q. Do you see the date stamp 25?

2 A. I have that and I saw what you are reading and I
3 read the same thing.

4 Q. Had you reviewed that report prior to coming here
5 today?

6 A. Yes, I had.

7 Q. I will refer you to Defendant's Exhibit 8, the
8 state of Washington records.

9 Do you see those records?

10 A. State of Washington records?

11 Q. Yes, on Social Health and Human Services?

12 A. Exhibit Number 7?

13 Q. Eight.

14 A. Okay. What page is that?

15 Q. If you look at date stamp 38?

16 A. Okay. I looked at my list on my report and I
17 don't have this -- yes, I do. I have the Washington
18 State Hospital but not the records of the school.

19 Q. So, you did review --

20 A. This is page 38. Yes, I have this.

21 Q. It has date stamp 38, personality pattern
22 disturbance, paranoid personality?

23 A. Yes, sir.

24 Q. Turn over to the next page date stamped 39.

25 Patient has just had a series of antisocial behavior. He

1 has gone to girls' bathroom, broke in a girls' bathroom,
2 and stole from soldiers, et cetera, and states he wants
3 to be more like animals, act on impulse without
4 consequences, knows they are wrong but can't help
5 himself. He had incest with his only sister.

6 Have you reviewed that document?

7 A. I did, yes.

8 Q. The impression was sociopathic personality?

9 A. I see that.

10 Q. What is a sociopathic personality?

11 A. That is an old name for antipersonality disorder.
12 He was 14 years of age then. We don't diagnosis people
13 with having antisocial at personality disorders below the
14 age of 16.

15 They may have some early symptoms but we
16 don't give them that diagnosis. It is too young.

17 Q. Today would you call that a behavior disorder?

18 A. Probably borderline personality disorder by the
19 symptoms being more like animals and having problems with
20 identity and breaking into a girls' bathroom.

21 These are all the same symptoms and
22 experiences I am aware of that led into my diagnosis of
23 borderline personality disorder.

24 I think that is what he had then and I
25 think they just misdiagnosed it.

1 Q. Let's look and talk about antisocial personality
2 disorder for a moment.

3 THE COURT: I am lost. What document are
4 you looking at? What packet of documents?

5 MR. BAKER: This is Defendant's Exhibit 8
6 and date stamp 39.

7 THE COURT: All right. Exhibit 8 is the
8 Washington --

9 MR. BAKER: -- State records, Your Honor.

10 THE COURT: Go ahead.

11 Q. Doctor, I am referring to the DSM 4 you talked
12 about earlier that is used in the psychological and
13 psychiatric field to diagnosis mental conditions.

14 Would you agree that the essential feature
15 of antisocial personality disorders is a pervasive
16 pattern of disregard for and violation of the rights of
17 others that begins in childhood or early adolescence and
18 continues into adulthood?

19 A. Yes.

20 Q. Deceit and manipulation are central features of
21 that disorder?

22 A. It is what it says. I would agree.

23 Q. Persons with this disorder may repeatedly perform
24 acts that are grounds for arrest?

25 A. Yes.

1 Q. Such as destroying property, harassing others,
2 stealing, pursuing illegal occupations?

3 A. Yes.

4 Q. They are frequently deceptive and manipulative in
5 order to gain personal profit or pleasure?

6 A. Yes.

7 Q. There might be a pattern of absences from work
8 that are not explained by illness?

9 A. Yes.

10 Q. Financial irresponsibility?

11 A. Yes.

12 Q. They may also be irresponsible and explode in
13 their sexual relationship?

14 A. Yes.

15 Q. History of numerous sexual partners?

16 A. Yes.

17 Q. They may be dishonorably discharged from the armed
18 services?

19 A. Yes.

20 Q. They often spend years in penal institutions?

21 A. Many of them do.

22 Q. It is a disorder that is much more common in the
23 prison population than the general population?

24 A. I think so, yes.

25 Q. Refer to that same exhibit, Defendant's Exhibit 8

1 at page 41.

2 A. All right.

3 Q. Do you see in the summary section they were
4 family interviews with both parents the patient and the
5 siblings?

6 A. I am sorry. Which one?

7 Q. Page 41 in the section that says summary at the
8 last sentence, indicating that the hospital had
9 interviewed the family, the parents, the patient and
10 siblings.

11 Do you recall that?

12 A. I see all that, yes.

13 Q. We do know that James Jones had parents,
14 correct?

15 He was not from a broken home?

16 A. No, he had parents.

17 Q. And his dad was in the military, a career military
18 man?

19 A. Yes.

20 Q. Which would be characterized as a stable job?

21 A. His father had a stable job, yes.

22 Q. And here it indicates that at least when he was in
23 trouble or had to be referred to this hospital that his
24 family was there?

25 A. Well, it said the interview. I don't know that

1 they were there. They interviewed them.

2 Q. With both parents and siblings. It would seem to
3 indicate that?

4 A. It seems to indicate they had interviews with both
5 parents and siblings, yes.

6 Q. And they described him as not a psychopathic
7 person but probably has a personality disorder described
8 as paranoid personality?

9 A. Right.

10 Q. And this was in 1964?

11 A. Right.

12 Q. Yes?

13 A. At 14.

14 Q. Turn to the next page, page 42.

15 It says he could be classed as a severe
16 adjustment reaction of adolescents without psychosis but
17 behavior disorder?

18 A. I see that.

19 Q. Is that something you reviewed?

20 A. I did.

21 Q. If you will look date stamp 43.

22 Do you see that?

23 A. I have it.

24 Q. And says social work?

25 A. Yes.

1 Q. Go to the second sentence. Very gradually Mrs. J.
2 acknowledged her overprotection and overconcern for Jim
3 and how she had even distorted facts of his difficulties
4 to school authorities and to the police in the past in
5 order to protect her own son?

6 A. I see that.

7 Q. At least it seems like he had a caring mother?

8 A. He had what?

9 Q. At least from that report it seems that he would
10 have had a caring mother?

11 A. Caring mother? I don't know if caring -- it was
12 somebody who was protective of him.

13 Q. He had a mother that was obviously concerned for
14 him?

15 A. She obviously had some concerns about him, yes.

16 Q. If you will turn to date stamp 46 heading clinical
17 record.

18 A. Yes.

19 Q. Do you see the reference to Mr. Jones that he had
20 been getting into fights, putting his hands on girls and
21 stealing underpants of good looking women for use with
22 masturbation?

23 A. What paragraph?

24 Q. Statement of the problem?

25 A. Right. Okay.

1 Q. He had entered several private homes on the
2 military reservation?

3 A. Right.

4 Q. Turn to date stamp 53.

5 Do you have that in front of you?

6 A. I have it.

7 Q. This refers to an incident where Mr. Jones had
8 broken into some people's home and stole some underwear
9 out of a girl's bedroom.

10 Do you recall those reports?

11 A. Yes, I do.

12 Q. Do you recall it indicating that James had a
13 sexual problem as early as five years old and would do
14 things on impulse?

15 Do you recall those types of statements?

16 A. Is that that same paragraph?

17 Here it is. Yes, I see it.

18 Q. If I could refer you to Defendant's Exhibit 9.

19 THE COURT: That is the New Jersey
20 records?

21 MR. BAKER: Yes, Your Honor.

22 Q. If you will turn to the second page of that
23 document.

24 A. All right.

25 THE COURT: I have one question. It says

1 names James Lee Collins. Who is that?

2 MR. BAKER: James Lee Collins in another
3 report says aka, James Lee Jones, Junior. The sixth
4 page.

5 Medical, social history. James Lee
6 Collins, aka, James Lee Jones, Junior.

7 THE COURT: I see that.

8 Q. Have you reviewed that record, doctor? You have
9 seen this, I believe?

10 A. I don't have it listed in my report. I may not
11 have seen this before.

12 Q. If you will look at the second page titled New
13 Jersey State Hospital at Trenton.

14 A. Right.

15 Q. The report says, 16 year old charged with juvenile
16 delinquency, atrocious assault and battery and creating a
17 disturbance?

18 A. Right.

19 Q. If you will turn to the next page.

20 Do you see Dr. Feniczy, M.D.?

21 A. Where are you reading from?

22 Q. Do you see the statement, the entry by Dr.
23 Feniczy, M.D.?

24 A. I just turned one page. I am on the third page.
25 Document that starts with this is the a 16 year old.

- 1 Q. The next page.
- 2 A. Okay. I don't see Dr. Feniczy. I see Dr. Buford.
- 3 Q. Above that.
- 4 A. It is the opinion --
- 5 Q. Do you see admission note staff at the top?
- 6 A. Summary of hospitalization. There is Feniczy on
- 7 the next page. The staff agrees with the impression.
- 8 Q. Do you see that staff report?
- 9 A. Yes.
- 10 Q. He diagnosed here with sociopathic personality
- 11 disturbance, correct?
- 12 A. Yes.
- 13 Q. Apparently, according to the psychiatrist, he
- 14 experienced a homosexual panic, no psychosis was evident.
- 15 Do you see that, doctor?
- 16 A. Yes. My opinions are not the same as yours. This
- 17 is the second page of the whole document you are reading
- 18 from.
- 19 Q. Did you see Dr. Feniczys' entry?
- 20 A. He signed it on top and Buford signed it on
- 21 bottom.
- 22 Q. He says no psychosis was evident?
- 23 A. No psychosis was in evidence, yes.
- 24 Q. Apparently, according to the psychiatrist he
- 25 experienced a homosexual panic?

1 A. Homosexual panic can be a psychotic reaction.

2 Q. If you turn to that summary of hospitalization?

3 A. Yes.

4 Q. It says that he was received at this institution
5 on August 18, 1966. According to information received
6 from the patient he had been in and out of trouble since
7 the age of five, breaking and entering resulting in
8 displacement in a youth center in Philadelphia?

9 A. Okay. That is in the first paragraph.

10 Q. Right. He goes on and I believe is discussing a
11 homosexual relationship he had with an older man?

12 A. Right.

13 Q. If you will look at the bottom of the page he
14 repeatedly denied hallucinatory experiences and no
15 delusional material was elicited?

16 A. Right.

17 Q. He had no time -- during this hospitalization he
18 had any psychotic manifestations?

19 A. Right.

20 Q. If you will turn to the document that is titled
21 medical social history?

22 A. I have it.

23 Q. Do you see the bottom paragraph, May, 1966?

24 A. Right.

25 Q. It indicates the patient was determined to run

1 away from home?

2 A. Right.

3 Q. And it goes on to say he participated with two
4 accomplices in an atrocious assault and battery on a
5 taxicab driver inflicting injury on the victim severe
6 enough to cause hospitalization?

7 A. Yes, I see that.

8 Q. Turn over to the next page where it says personal
9 history.

10 A. Right.

11 Q. It says, school history. He was expelled for
12 threatening a teacher with a knife -- where it says
13 school history?

14 A. Right.

15 Q. Do you recall that?

16 A. I do.

17 Q. Now, if I could turn your attention to prison
18 records.

19 Do you have it in front of you?

20 A. That is black one, the number six?

21 Q. The military records?

22 A. I have it.

23 Q. I believe it is number 10.

24 A. Number 10.

25 Q. Have you reviewed his military records?

1 A. I was looking at my list I prepared when I made up
2 my report. I don't know whether I have.

3 Yes, I do. Number 29, military records.

4 Q. Do you recall reviewing them?

5 A. Do I recall what?

6 Q. Reviewing them?

7 A. Yes, sir.

8 Q. Do you recall what those documents reflect, that
9 he had on several instances been absent without leave
10 from military duty?

11 A. Yes.

12 Q. He had been disciplined, court marshalled in the
13 military for that.

14 Do you recall that?

15 A. Yes, I remember that.

16 Q. Ultimately he was discharged under conditions
17 other than honorable?

18 A. Yes, I knew that.

19 Q. If I could refer you to Defendant's Exhibit 6
20 which is the prison records. It might be easier if I
21 give you some information about what is in these records,
22 and if you recall that or don't recall -- if not, we will
23 take it up. Maybe that will happen.

24 A. There are tabs. Do you want to name the tab?

25 Q. I am going to kind of go in order with you to see

1 and we will discuss basically what they report.

2 Do you recall -- looking at tab 1 -- let's
3 go to tab 2. There is a tab 2 that indicates report of
4 psychiatric evaluation by William N. Fitzpatrick,
5 Baltimore, Maryland?

6 A. Yes.

7 Q. Indicating the petitioner was arrested in April,
8 '69 for robbery of a soldier at Fort Meade, Maryland.

9 Do you recall that?

10 A. Right.

11 Q. And the conclusion of the report indicated that
12 the defendant was competent to face trial. Do you recall
13 that?

14 A. Yes.

15 Q. There was no finding of a mental illness. Do you
16 recall that?

17 A. I am sorry. I didn't hear that.

18 Q. There was no finding of a mental illness. Do you
19 remember that?

20 A. Yes.

21 Q. If we do look at that same document and referring
22 to the robbery, if you will look down at the bottom of
23 the page.

24 His reasons for participating in the
25 yoking of a soldier was money to go to his 16 year old

1 wife that was five months pregnant?

2 A. I see that.

3 Q. He was surprised they found so much money in the
4 man's wallet as they did?

5 A. I saw that.

6 Q. When he was apprehended he banged his head on the
7 window. They had to tie him down in the police car with
8 the seat belt?

9 A. Right.

10 Q. It was later he ignited a sheet to try to
11 suffocate myself, there just ain't no reason to live
12 anymore.

13 Do you recall that?

14 A. I saw that.

15 Q. Dr. Fitzpatrick goes on and describes the
16 petitioner as this young man is immature and dedicated to
17 the notion that since his father did not love him the
18 world owes him unlimited indulgence and support. The
19 violence, the head banging and wrist slashing have come
20 at times of impotent rage at the discovery that the world
21 expects him to behave responsibly?

22 A. I see that.

23 Q. So at least it appears that according to that
24 statement that the petitioner did not want to behave
25 responsibly?

1 A. He was showing very clear signs of borderline
2 personality disorder. He has it written all over here.

3 Q. Lack of respect for authority correct?

4 A. Yes.

5 Q. That is the consistent?

6 MR. MACLEAN: If he could finish answering
7 the question.

8 THE COURT: He finished.

9 Q. And consistent with antisocial personality, isn't
10 it, doctor?

11 A. It could be. At least those symptoms. There are
12 much more than antisocial personality disorder.

13 When you make a diagnosis, you have to
14 look at a whole picture.

15 Q. There is more, but it looks antisocial?

16 A. It looks antisocial but part of his borderline
17 personality disorder. He says nobody cares about me
18 anymore. They abandoned me. That is way he looks at
19 life.

20 Q. He looks at life through lack of authority?

21 A. His father had brutalized him all his life and
22 other figures became like his father. He said clearly he
23 was getting back with his father from these antisocial
24 acts.

25 Q. Let's move on and look at some other prison

1 records.

2 If you will go to Exhibit 9 or number
3 nine -- excuse me -- in Exhibit 6.

4 Do you see that?

5 A. Is that 9, New Jersey Hospital?

6 Q. Right.

7 A. What page.

8 Q. The first page of number 9.

9 THE COURT: Are you talking about tab 9?

10 MR. BAKER: Tab 9. Excuse me. I am
11 sorry.

12 A. I have the first page.

13 Q. Yes. You will see the entry about five lines
14 down, jailed repeatedly since age eight. Do you see
15 that?

16 A. I see that.

17 Q. Quote, I don't feel guilty about my crimes?

18 A. I see that.

19 Q. And if you go a little further down, I hate the
20 law?

21 A. I see that.

22 Q. Move to Exhibit 10.

23 A. You mean tab?

24 Q. Tab 10. I am sorry. This is a federal
25 reformatory at Petersburg, Virginia?

- 1 A. Right.
- 2 Q. And he is written up for contraband?
- 3 A. Yes.
- 4 Q. Two watches and some drugs?
- 5 A. Some black and red capsules, yes. Librium.
- 6 Q. Move on to tab 11. It indicates that sharpened
- 7 table knife was concealed in the small of his back under
- 8 his clothing?
- 9 A. Yes.
- 10 Q. Go to number 13. Tab 13. Do you see the fourth
- 11 paragraph down, during the psychiatric examination he was
- 12 in excellent contact with his surroundings, he was
- 13 responsive, friendly and cooperative. He admitted to
- 14 short lived hysterical outburst, temper tantrums and all
- 15 kinds of destructive behavior as a reaction to
- 16 frustration?
- 17 A. I see that.
- 18 Q. And he seemed to have a morbid pathological
- 19 resentment of his father and father figures?
- 20 A. Very clear, yes.
- 21 Q. Tab 16, federal reformatory?
- 22 A. Right.
- 23 Q. Misconduct report?
- 24 A. Got it.
- 25 Q. Concealing contraband, ring; lying to an officer;

1 refuse to go remove his clothing for shakedown,
2 disobeying a direct order, using foul and abusive
3 language.

4 Do you see that?

5 A. I do.

6 Q. You have reviewed these records, correct?

7 A. I did.

8 Q. Another police conduct report, 17, when refusing a
9 cell assignment at Petersburg?

10 A. I see that.

11 Q. Tab 18, entry by psychologist Robert Resnick?

12 A. Right.

13 Q. The middle paragraph, apparently he has difficulty
14 with violent outbursts if he was pressured or angered?

15 A. I see that.

16 Q. Exhibit 19. It refers to the -- paragraph down
17 talks about drugs, his opinion about the use of drugs has
18 changed.

19 He feels he was immature when he was on
20 drugs?

21 A. Right.

22 Q. There is no indication there he was taking drugs
23 for a spiritual purpose?

24 A. No. This was earlier. That's correct.

25 Q. Tab 20, another misconduct report at the

1 reformatory. Contraband, knife with sharpened blade,
2 taped handle?

3 A. Right.

4 Q. He stated reason for having it was he found it and
5 he was going to turn it in.

6 Do you see that?

7 A. Right.

8 Q. The investigating officer's statement says that
9 statement is in question because Jones has been working
10 these quarters for some time and could have turned it in
11 earlier?

12 A. Yes.

13 Q. At least with that document it appears that he may
14 have lied, correct, lied about that to officials?

15 A. Lead investigator had some question about it,
16 yes.

17 Q. Exhibit 21, another misconduct report at
18 Petersburg?

19 A. Rights.

20 Q. Throwing a tray of food barricading himself in the
21 cell and destroying government property, refusing a
22 direct order, threatening bodily harm to officers?

23 A. Right.

24 Q. If you will look at tab 22.

25 Do you see that?

1 A. I do.

2 Q. You had talked earlier about his concerns about
3 homosexual pressure or fears of being homosexually
4 raped?

5 A. Yes.

6 Q. As this report indicates -- and I believe others
7 do, too -- there is also evidence that he was involved in
8 consensual homosexual acts, correct?

9 A. He apparently had been and he was also raped and
10 he was also coerced, all three types.

11 Q. Tab 22. Excuse me. Tab 23. Do you see that
12 one?

13 A. Yes.

14 Q. Misconduct report, Petersburg, out of bounds and
15 lying to an officer?

16 A. Yes.

17 Q. Tab 24. Misconduct report, Petersburg, Virginia?

18 A. Right.

19 Q. This refers, as we have heard testimony earlier,
20 to the 1972 stabbing that you are familiar with?

21 A. Yes.

22 Q. And this document reflects that this officer
23 approached inmate Jones and asked him to submit to a
24 search, correct?

25 A. Right.

1 Q. And that Jones replied to that officer, don't put
2 your hands on me?

3 A. Right.

4 Q. And this officer was suspicious of Jones as he had
5 observed Jones in the vicinity of Stein's room?

6 A. Yes, that is what he says.

7 Q. Turn to memo 25. Another memorandum concerning
8 that same stabbing in 1972?

9 A. Right.

10 Q. Will you refer down to the last paragraph. Senior
11 Officer Specialist William E. Daniel was the officer in
12 charge and he observed inmate Jimmy Jones near Stein's
13 room. Just before Stein staggered into the hall and
14 collapsed on the floor he felt it significant that when
15 most of the other inmates rushed toward the incident
16 Jones went in the other direction.

17 A. I see that.

18 Q. Tab 26. Jones is a known homosexual, the type
19 that plays both the passive and aggressive role. Third
20 paragraph.

21 Do you see that?

22 A. Right.

23 Q. Refer you to tab 29. A memo reflecting that Jones
24 was captured by prison guards, after apprehension he
25 refused to cooperate with the guards?

1 A. This is tab 29?

2 Q. Uh-huh. Two pages.

3 A. All right.

4 Q. Tab 30, another memorandum. Last paragraph, Jones
5 admits to getting into a fight. Extremely poor attitude
6 during the investigation of the disturbance.

7 A. All right.

8 Q. Tab 31. This is at Fort Leavenworth. This is an
9 incident report of unexcused absence from work?

10 A. Right.

11 Q. Tab 32. Do you see the entry, Jones is a super
12 militant who in my judgment is looking for trouble all
13 the time?

14 Do you see that?

15 A. Yes.

16 Q. Is that something that you considered?

17 A. I did.

18 Q. Doctor, what I would like to do, you reviewed his
19 records, correct?

20 A. I did.

21 Q. You have seen reports where he has engaged in
22 repeated misconduct, infractions while in prison,
23 correct?

24 A. Yes.

25 Q. And that includes lying to staff?

1 A. Lying.

2 Q. Lying to prison officials?

3 A. Sure, yes.

4 Q. Includes possession of contraband which included
5 knives?

6 A. Yes.

7 Q. Unexcused absences from work?

8 A. Yes.

9 Q. Refusing to obey orders of prison officials?

10 A. Yes.

11 Q. Tab 49, I refer you to. Do you see that one?

12 A. Yes.

13 Q. Possession of narcotic paraphernalia?

14 A. Yes.

15 Q. This is dated 1976?

16 A. Right.

17 Q. Jones was noticed acting suspicious. I shook him
18 down and found syringe and needle in his rear pocket?

19 A. Right.

20 Q. Do you recall that?

21 A. Yes.

22 MR. REDICK: Your Honor, I am going to
23 interpose an objection.

24 THE COURT: What is the basis of the
25 objection?

1 MR. REDICK: Your Honor, what is going on
2 here is he is going through these records and he is
3 asking him if he read the records, and he already
4 testified the records he reviewed.

5 He is not asking him any questions about
6 the record. Basically he is just reading the record.

7 THE COURT: Mr. Baker.

8 MR. BAKER: Well, Your Honor, he has
9 testified about various things. I want to see what
10 knowledge he has relied upon. The way to do that is go
11 through the record with him.

12 MR. REDICK: He already testified he
13 reviewed the record. Let him establish what record he
14 didn't review.

15 MR. BAKER: That is my point, what he
16 reviewed --

17 MR. REDICK: He testified he read these.

18 MR. BAKER: -- the substance of what he
19 reviewed.

20 THE COURT: I think Mr. Redick has a
21 pretty good objection. If you want to ask him questions
22 about these records, if he disagrees or agrees with the
23 conclusions, whether in fact he considered it, you are
24 free to do that.

25 MR. BAKER: Yes, sir.

1 THE COURT: But this is not an opportunity
2 simply to do an outline for your proposed findings of
3 facts and conclusions of law.

4 MR. BAKER: Yes, Your Honor. I will move
5 on.

6 Q. Doctor, you have indicated you discussed about a
7 dissociate state concerning this crime?

8 A. Yes.

9 Q. That is essentially the basis of your opinion,
10 that he would be insane at the time of the offense?

11 A. Under the old Tennessee law, yes.

12 Q. Or would not have been able to premeditate or
13 deliberate?

14 A. Because of his dissociation, correct.

15 Q. Doctor, of course there have been a number of
16 inconsistencies in his statements throughout the course
17 of his criminal proceedings in Tennessee, correct?

18 A. Yes.

19 Q. Do you agree with that?

20 A. Yes.

21 Q. And are you aware that he told Middle Tennessee
22 Mental Health Institute he remembered very well what he
23 did?

24 A. I am aware he said that, yes.

25 Q. Of course that is directly contradictory to what

1 he said and he told you?

2 A. That is not only what he told me but a number of
3 other people, and what he testified to in his case.

4 Q. Of course he is facing a potential death penalty
5 case?

6 A. Yes.

7 Q. He is in jail?

8 A. Yes.

9 Q. Convicted of murder?

10 A. Yes.

11 Q. Can you think of anyone more than the petitioner
12 that would have a motive to lie or fabricate a story?

13 A. I think all people in that situation have a motive
14 to put their best foot forward and get the best result
15 they can get, yes.

16 Q. Are you aware that he told his first attorney,
17 Neal McAlpin, about a Sam Blackstock?

18 Does that name ring a bell?

19 A. That lie he told about somebody else being
20 there?

21 Q. Yes.

22 A. Yes, I am aware of that.

23 Q. When you do a forensic evaluation it is different
24 than a clinical evaluation, correct?

25 A. Yes, it is.

1 Q. In a clinical setting you really don't have reason
2 to question the voracity of the patient, correct?

3 A. That's correct.

4 Q. Because the patient is there for treatment?

5 A. Right. I wrote that somewhere.

6 Q. But in a forensic setting it is quite the
7 opposite?

8 A. Yes.

9 Q. Today we are here in a forensic setting?

10 A. That's correct.

11 Q. And you admit that you were aware of the lies that
12 he has told about what happened?

13 A. Yes, I am.

14 Q. Let's look at what he has stated to you.

15 Now, you stated that he had told you he
16 lacked a memory up until he was about a half mile home
17 with Mr. Miller, correct?

18 A. Right.

19 Q. Do you recall in his hypnosis there was a
20 pre-hypnosis review or interview?

21 A. Yes.

22 Q. Do you recall in that interview, he stated that he
23 couldn't remember anything until the next morning when he
24 was at Miller's house?

25 Do you recall that statement?

1 A. I do.

2 Q. Of course that is inconsistent, isn't it?

3 A. That is inconsistent.

4 Q. Let's look at some other circumstances, doctor.

5 You said that the dissociate state
6 essentially arose due to the concern for the children and
7 the dog, correct?

8 A. Not just him. It was his putting himself in the
9 place of those because of his own prior experiences and
10 his mental condition, PTSD and borderline personality
11 disorder.

12 That was a stress on him. He identified
13 with them and worried about them.

14 Q. It was his concern for the dog and children which
15 he expressed to you led -- is expressed to you?

16 A. That's correct.

17 Q. That is what you used to base your opinion on,
18 that he suffered a dissociate episode?

19 A. That is one area. If you or I were in that same
20 area with our own and borderline condition and didn't
21 have this same kind of history and background he had, I
22 doubt we would have dissociated.

23 But we are talking about Mr. Rahman that
24 does have all that and under those conditions at that
25 time it is my opinion he did dissociate.

1 Q. Doctor, of course you say he expressed concern for
2 the safety of the children, right?

3 A. Right.

4 Q. Of course, there is the other testimony in this
5 case he threatened to snap their heads off?

6 A. Yes. We went through that this morning. I
7 remember that somebody said that.

8 Q. That is certainly inconsistent with that?

9 A. It certainly is.

10 Q. Does that concern you about the truth of this
11 statement?

12 A. Yes, it is. That is why I gave the opinion that
13 was early in the encounter, when he was still in his
14 gangster persona, where he was Scar Face in Chicago and
15 that was part of the glib threats he was making.

16 But during his later time when he was
17 there, his concern for the children was clearly expressed
18 both consistently with me and on the videotape.

19 Q. But his actions and testimony indicated that he
20 made this threat though, correct, to other witnesses?

21 A. There was one witness that said that and I
22 remember reading it. I was concerned about it.

23 Q. Now, another possible reason he might have been
24 concerned for the children is that they were making noise
25 or he didn't want to alert attention to other people,

1 right?

2 That certainly is plausible?

3 A. That is an option you can consider.

4 Q. This is an apartment complex. It wasn't a
5 detached home?

6 A. Okay.

7 Q. And the same thing about the dogs?

8 A. Same thing. That is certainly a reasonable option
9 to consider.

10 Q. And if in fact he had lied and in fact had
11 stabbed these people and recalled it, that would
12 discredit your opinion, correct?

13 A. I am sorry. He what?

14 Q. Had he actually committed the stabbing, knew he
15 committed the stabbing but lied to you or to others about
16 that, that would discredit your theory, is that correct,
17 that he dissociated?

18 A. If he was aware he did the stabbings, always aware
19 of it and lied to me about his memory loss and lied to me
20 about a lot of other things, then certainly that would
21 put a lot of holes in my opinion, yes.

22 Q. Doctor, there is no method recognized method to
23 determine whether he was telling you the truth or not the
24 truth, is there?

25 A. There is no fail-safe method, no. There is no

1 guarantee. It is a clinical experience.

2 You do this for 35 years, and you have
3 seen -- I have seen 8,000 people charged with crimes,
4 over 300 charged with murder. You get to know after
5 awhile what you need to look for, and it is another
6 reason why we did the hypnosis. Not for the truth of it
7 but as another test to check on the consistency of what
8 he is telling us.

9 Q. Doctor, with regard to the hypnosis, let's talk
10 for a minute about that.

11 A. All right.

12 Q. You would agree there is no consensus that exists
13 regarding the use of hypnosis as a means to refresh
14 memory?

15 A. There is, no.

16 Q. Consensus in the medical profession that exists
17 regarding the use of hypnosis as a means to refresh
18 memory?

19 A. Refresh memory? I think there is some controversy
20 there.

21 It is not a hundred percent consensus,
22 that is correct.

23 Q. In fact, there has been considerable controversy
24 in this area?

25 A. There are two camps. There are those that say it

1 can and those that say it can't.

2 Q. There is no method to determine whether a person
3 was in fact hypnotized?

4 A. That is absolutely correct. I so testified not
5 only today but many times before.

6 Q. With regard to hypnotizability, no objective tests
7 were conducted in this case to determine the ability of
8 him to be hypnotized?

9 A. Even if there were, you couldn't guarantee he was
10 hypnotized if even he showed high hypnotizability.

11 Q. You would agree the literature with hypnosis
12 recommended the type of subjective tests?

13 A. It does but it still doesn't guarantee anything.

14 Q. None of those tests were done in this case?

15 A. None of them were done.

16 Q. Do you agree that scientific literature indicates
17 that hypnosis can increase the inaccurate response to
18 leading questions?

19 A. You bet. Yes, I do.

20 Q. It can increase the subjects confidence in his
21 memories?

22 A. As though it was truth, yes. I would agree with
23 that.

24 Q. It can increase errors while also falsely
25 increasing confidence in the memory?

1 A. It could do that if the interview is not properly
2 conducted, that is correct.

3 Q. Would you agree that untrained individuals with no
4 special knowledge of hypnosis are capable of simulating
5 or faking hypnosis sufficiently well to deceive even
6 experienced hypnotists?

7 A. We have seen that happen in celebrated cases.
8 That is certainly true.

9 Q. And also you have seen and read that individuals
10 in deep hypnosis are able to excerpt considerable control
11 over their statements and may willfully lie? That is
12 true, isn't it?

13 A. That is true.

14 Q. And statements by criminal defendants under
15 hypnosis, therefore, can be self-serving and purposefully
16 deceptive, correct?

17 A. That's correct, it could be.

18 Q. You have no way of determining whether this
19 petitioner was deceptive, do you?

20 A. I have no way of, no test to tell me that.

21 Q. And as you just talked about there were many
22 contradictions about his lack of memory regarding this?

23 A. There are some inconsistent statements, yes.

24 MR. BAKER: Just a minute.

25 Q. Doctor, do you recall in the pre-hypnotic

1 interviews with the petitioner where he indicated that
2 Devalle Miller was acting like he was getting hyped
3 and dogs started barking, they were barking at the
4 Devalle?

5 A. I remember him saying that, yes.

6 Q. That would be consistent with him wanting to keep
7 the dogs quite, correct?

8 A. Consistent with that or protecting the dogs as
9 well.

10 Q. If you are committing a crime with weapons in an
11 apartment building, you don't want a lot of noise do
12 you?

13 A. You sure don't.

14 Q. You don't want kids yelling or dogs barking?

15 A. That's correct, you sure don't.

16 Q. Now, he also told you he had taken marijuana and
17 LSD prior to committing these offenses?

18 A. Yes. The marijuana, maybe one micro dot of LSD,
19 that is correct.

20 Q. Doctor, the DSM 4 states with regard to mental
21 diagnosis such as the ones you have made here today that
22 malingering should be ruled out, correct?

23 A. Malingering should always be ruled out, especially
24 on criminal case.

25 Q. You cannot rule that out in this case, can you?

1 A. You mean generally or specifically about
2 particular issues?

3 Q. Whether or not he lied to you about his memory?

4 A. That is not malingering. Malingering is faking an
5 illness. I don't think he is faking an illness.

6 He has the illness and well documented and
7 agreed by everybody that he has such a diagnosis.

8 Does he lie? Yes. Does he lie about
9 certain things? Yes.

10 That is not malingering.

11 Q. He could have lied about his lack of memory?

12 A. He sure could.

13 Q. If he did remember it and the facts were
14 consistent with the testimony of the co-defendant then in
15 fact he would have been sane?

16 He would have known what he did,
17 correct?

18 A. If he remembered and he did it, had no amnesia,
19 no dissociation and did it the way his co-defendant said
20 he did it then I wouldn't be here testifying he was
21 insane, that's correct.

22 Q. Now, you had testified also that you believe the
23 hypnosis indicated not necessarily fact but his belief of
24 what happened?

25 A. That's correct.

1 Q. But you don't have any way to verify that belief
2 either, do you?

3 A. I don't.

4 Q. Doctor, I would like to review some of the
5 testimony, his testimony at trial with you, okay.

6 There is no question here that he had a
7 plan, correct?

8 A. I am sorry?

9 Q. There is no question that this petitioner had a
10 plan, correct?

11 A. He had a plan to intimidate the drug dealers,
12 yes.

13 Q. He talked about that. He in fact had been to this
14 victim's house prior?

15 A. Yes, he had.

16 Q. According to his statements?

17 A. Yes.

18 Q. And he had a plan when he went over there that
19 night, according to him?

20 A. Yes.

21 Q. And, of course, as we already mentioned, according
22 to the co-defendant, he had indicated that they would
23 have to kill the victims, correct?

24 A. That is what Mr. Miller said, yes.

25 Q. Of course the defendant denied that, didn't he?

1 A. He did deny it.

2 Q. He also denied the crime plan they had the night
3 before as described by Miller.

4 He and Miller had a different account of
5 that, correct?

6 A. Yes.

7 Q. He testified about that at trial?

8 A. Yes.

9 Q. He wasn't conceding to everything that Miller
10 testified to?

11 A. No, he was not.

12 Q. He was clarifying areas where he disagreed,
13 correct?

14 A. That is how I read it, yes.

15 Q. In that testimony he admitted the stabbings?

16 A. He admitted at the time he was testifying? He
17 did make such admissions, or submissions, the way he put
18 it.

19 Q. Now, if in his testimony he testified that, quote,
20 during the time he asked the man to lay down there was a
21 little black dog and big brown dog in there, so they had
22 begun to bark?

23 A. Yes.

24 Q. He is indicating they are making noise, right?

25 A. Right.

1 Q. So he goes, oh. So as Mr. Miller went to take the
2 tape out of the bag to tie the legs, I guess because of
3 the confusion that was transpiring throughout the
4 dwelling, he couldn't get a train of thought of what he
5 was doing.

6 Now, that statement indicates that there
7 is confusion, the dogs barking and that because of the
8 co-defendant couldn't get things going that Jones would
9 get things going.

10 That is what he is essentially saying
11 there?

12 A. Right.

13 Q. That is how you read it?

14 A. I read it.

15 Q. This is on 1859 of his testimony. Now, he goes
16 and states that Norma Jean Norman locked the little --
17 says back but it should be black -- dog up into her
18 bedroom and I let the big brown dog out of the front
19 door.

20 Now, of course, Norma Norman testified
21 in this case that she had put the dogs in the back
22 bedroom.

23 She never made mention of Jones letting
24 the dogs out of the house?

25 A. Yes.

1 Q. If testimony were that when the police arrived the
2 dogs would be in the house, that would be inconsistent
3 with that statement, too?

4 A. It depends on one of the dogs that was out might
5 have gotten in. I can't answer that.

6 Q. Of course you are familiar with the Scar Face
7 references?

8 A. Yes.

9 Q. Of course there was evidence in this case that
10 Scar Face was a movie about an ex-convict who sought to
11 infiltrate the drug business at the low level and work
12 his way up through violent means?

13 A. I saw the movie.

14 Q. There are interesting parallels between that case
15 and this?

16 A. Yes.

17 Q. This was a low level drug deal, Patrick Daniels?

18 A. Right.

19 Q. The petitioner is ex-convict, correct?

20 A. Right.

21 Q. He went in there and called himself Scar Face?

22 A. He did. From Chicago.

23 Q. Of course there is evidence that they had gloves,
24 they wore gloves?

25 A. They wore gloves.

- 1 Q. That, of course, also involved some planning?
- 2 A. It does.
- 3 Q. If you can commit a crime you don't want to leave
4 fingerprints, do you?
- 5 A. Sure don't.
- 6 Q. He knew he was going over there to commit a crime,
7 didn't he?
- 8 A. He knew what he was going to do. I don't know if
9 he considered it a crime. He knew it to be a positive
10 thing for his community.
- 11 Q. He knew enough to be fearful enough of leaving
12 fingerprints, didn't he?
- 13 A. Well, he wore gloves.
- 14 Q. Now, the testimony also reflects that he had seen
15 these girls early on when he got to Patrick Daniels'
16 house, correct? He noticed them there?
- 17 A. Yes.
- 18 Q. Now, his defense counsel, Mr. Barrett, indicated
19 yesterday and I believe at the post conviction as well
20 that his notices reflected that Jones prior to going to
21 Daniels' house had told Miller that there may be children
22 there?
- 23 A. Right.
- 24 Q. So there it indicated he knew there might be
25 children there when he got there?

1 A. Okay.

2 Q. I will refer you to I believe petitioner's Exhibit
3 138, some excerpts from his testimony.

4 Do you have that in front of you?

5 A. I don't have it in front of me.

6 MR. MACLEAN: I think it is on the
7 chair.

8 THE COURT: Is that part of the folders?

9 MR. MACLEAN: It was the testimony, the
10 admission.

11 May I approach the witness?

12 THE COURT: Yes. Let's describe what it
13 is so we know.

14 MR. BAKER: They are excerpts. If it is
15 not handy, that is okay. We can do without it.

16 THE COURT: Well, if the judge would wake
17 up -- I say that tongue in cheek. Here it is, sitting on
18 the desk. I have got it.

19 Q. Turn to page 1865 of that exhibit.

20 A. All right.

21 Q. Line six on direct examination. Quote. I am
22 going to submit to the fact that I am the individual that
23 committed these particular felonies or assaults among
24 these people but I don't remember, you know, I don't
25 remember too much and why that all of a sudden came to

1 me?

2 A. I read that this morning, yes.

3 Q. So, he is saying in that statement it appears that
4 he has the memory of committing that stabbing?

5 A. Not saying that at all. He is saying I am going
6 to submit to the fact that I am the individual and there
7 are a lot of reasons why he is going to do that. He
8 never says he remembers.

9 Q. He says I don't remember too much of why that all
10 of a sudden came to me. He is having a real -- saying
11 according to him --

12 A. I don't know what he means by that.

13 Q. Okay. Of course, doctor, outside of the stabbing,
14 he remembers a lot of other details of what is going on
15 in that house, correct?

16 A. As far as I know, what he told me and what I have
17 seen, he remembers a lot of things up to the point of
18 duct tape and kind of standing over Norma Norman and has
19 no memory after that until he is about a half mile from
20 Mr. Miller's house.

21 That has been pretty consistent.

22 Q. Doctor, he remembered going to the house?

23 A. Going into the house.

24 Q. Into the Daniels' house?

25 A. I think he does.

1 Q. He remembers Patrick Daniels setting the marijuana
2 in the kitchen?

3 A. Yes.

4 Q. He remembers where everyone is standing?

5 A. He remembers weighing the marijuana, yes.

6 Q. He remembers when they pulled the guns?

7 A. I think he does, yes.

8 Q. Remembers tying up the victims?

9 A. He does tying up Patrick Daniels and partly tying
10 up Norma Jean Norman.

11 Q. He tied up their eyes as well?

12 A. The eyes and maybe the mouth.

13 Q. And if you are tying someone's eyes up, you would
14 do that because you didn't want them to see something,
15 wouldn't you, doctor?

16 A. Intimidating makes them more vulnerable and
17 you can infer from that you didn't want them to see
18 anything.

19 Q. Doctor, the only way your opinion, in your mind,
20 could be valid is if, in fact, the facts were the way
21 as James Jones stated them, correct, his facts and
22 memory?

23 A. Well, the way he stated it and some of which is
24 corroborated by other evidence, other statements I
25 have.

1 Q. But in particular with regard to his memory or
2 lack of memory, you rely upon his representation that he
3 doesn't remember?

4 A. Consistency of it, I do.

5 Q. Or inconsistency of that?

6 A. Or inconsistency.

7 Q. Doctor, you have talked a bit about the borderline
8 personality and also antisocial personality disorder.

9 Isn't it common to have features of more
10 than one personality disorder?

11 A. Very common.

12 Q. And the diagnoses are not exclusive of the
13 evidence?

14 A. They are not.

15 Q. The DSM 4 indicates that with regard to antisocial
16 personality disorder that persons with antisocial
17 personality disorder often have personality features that
18 meet criteria for other personality disorders?

19 A. That's correct.

20 Q. Particularly borderline?

21 A. Yes.

22 Q. Narcissistic?

23 A. Yes.

24 Q. In fact, you cannot rule out the fact that he may
25 have had an antisocial personality as well, correct?

1 A. I think he has antisocial features and may rise to
2 the level of antisocial personality disorder. I won't
3 dispute that. That wasn't my major diagnosis.

4 I think the major diagnosis is borderline
5 personality disorder.

6 Q. But you do not dispute he has had a history of
7 antisocial behavior?

8 A. Behavior is antisocial. To call somebody an
9 antisocial personality disorder you need more than
10 behavior. If the behavior is reflective of borderline
11 personality disorder it can be as well.

12 There can be overlapping symptoms. One
13 has to look at the overall picture and one has to do a
14 very careful examination of the individual before jumping
15 to the conclusion of a diagnosis.

16 Q. Of course you are coming into this over 10 years
17 from the date of this offense?

18 A. Unfortunately that is true.

19 Q. And it is much harder to make a diagnosis when
20 there is a large time gap like that, correct?

21 A. Unless the symptoms are still observable, that is
22 true.

23 Q. And it is even harder to make a sanity
24 determination?

25 A. It is more difficult to make that because you have

1 to make the jump from the diagnosis to the legal test
2 with the data you have, that is correct.

3 Q. Doctor, are you familiar with the American
4 Psychiatric Association report on sanity regarding the
5 John Hinkley case?

6 A. I may have read it. It is not at the top of my
7 tongue, no.

8 Q. Would you agree with their statement -- this is
9 with regard to the American Psychiatric Association -- we
10 adopt this position because it is clear that
11 psychiatrists are experts in medicine, not the law.

12 When, however, ultimate issue questions
13 are formulated by the law and put to the expert witness,
14 they must say yea or nay, then the expert witness is
15 required to make a leap in logic.

16 It is a leap in logic when you try to make
17 the sanity determination, isn't it, doctor?

18 A. When you say leap in logic, you have to understand
19 what that means. It goes beyond the training that
20 psychiatrists and physicians have had in to the legal
21 area.

22 But we do that by extrapolation, by
23 judgment, I suppose, and give our opinion to the best of
24 our ability.

25 I would agree that can it be a leap, that

1 not everybody agrees with it.

2 Q. Sir, would you agree with this statement, that
3 with regard to the psychiatric profession that it has
4 been the experience that sociopathics or other
5 personality disorders do not impair behavior control?

6 A. Do not do what?

7 Q. Impair behavior control?

8 A. I suppose with antisocial or sociopathic, as you
9 call it, personality disorder that is probably true. I
10 think with some paranoid personality disorders that are
11 severe and borderline personality disorder are severe, I
12 think there can be an impairment of behavior control,
13 yes.

14 Q. Doctor, it is true that in most cases where there
15 is insanity a patient has some form of psychosis? You
16 agree with that statement, wouldn't you?

17 A. I would certainly agree with that in the
18 McNaulton (ph) jurisdictions where the issue is a
19 cognitive one, did he know what he was doing wrong.

20 When it comes to the volition issue you
21 have here in Tennessee at the time of the crime, I would
22 say that one doesn't necessarily have to be psychotic in
23 order to lack substantial capacity to control himself or
24 conform his conduct to the requirements of the law.
25 Certainly for the cognitive issues you do. That has been

1 my experience as well.

2 Q. And your opinion here is limited just to that one
3 issue, isn't it?

4 Your opinion is that he was unable to
5 control his conduct?

6 A. Not unable. He lacked substantial capacity which
7 is not total inability to control. Lacked substantial
8 capacity to conform his conduct to the requirements of
9 the law because of his mental condition he had at the
10 time of this act.

11 Yes, that is my opinion.

12 Q. That ties directly into this dissociate episode?

13 A. Yes.

14 Q. And if in fact he had not suffered a dissociate
15 episode, he would have been sane?

16 A. If he did not have a dissociate episode and severe
17 personality disorders post traumatic stress disorders and
18 wasn't responding to the pressures on him at that time to
19 the point he acted the way he did, I would say that he
20 would not have the insanity defense, that is correct.

21 Q. You're not saying that even without dissociate
22 episodes that he is insane at the time of the events?

23 A. I think the dissociation has to go with the total
24 person, the two diagnoses I gave, the stresses he was under
25 and kind of individual we are talking about.

1 I just want it clear for the record, we
2 can't take all that out of context and say, well, if you
3 don't have the dissociation then we don't have insanity.
4 Dissociation is an integral part of this person's life
5 and total picture.

6 Q. You're saying even if he in fact knew what he was
7 doing and had memory of it that he was still insane?

8 A. No. You are adding two things. If he knew what
9 he was doing, that is McNaulton. I am not saying he
10 didn't know what he was doing.

11 If he remembered, you asked this before
12 and I think I gave the same answer twice. If he
13 didn't remember and was lying to me about not remembering
14 and did not of a dissociation then I would change my
15 opinion.

16 MR. BAKER: That is all, Your Honor.

17 THE COURT: All right.

18 MR. BAKER: I did have one other thing I
19 wanted to ask.

20 THE COURT: Go ahead.

21 Q. Doctor, are you aware -- you talked about the
22 petitioner's relationship or his kinship with native
23 Americans and you were aware he escaped from prison and
24 had been in South Dakota?

25 A. Yes.

1 Q. Are you aware of the murder that occurred in South
2 Dakota?

3 A. I am aware of some things about it. I don't know
4 very much. I know there was one.

5 MR. PRUDEN: I move for Defendant's
6 Exhibit 12.

7 THE COURT: All right. What is it?

8 MR. PRUDEN: Your Honor, this is records
9 from post conviction counselor's file regarding the
10 incident that occurred while he was on escape in South
11 Dakota.

12 We move for admission of that document.

13 THE COURT: All right. That will be
14 number 12.

15 Do you have a question?

16 MR. MACLEAN: No objection.

17 Q. Were you aware, doctor, that James Jones had been
18 present when a murder occurred in South Dakota?

19 A. Had been present.

20 Q. Yes. Was present?

21 A. I don't know the details. I know what he told me,
22 because I never have seen this document before.

23 He told me something about one of his
24 colleagues was implicated and he had to go down and
25 testify to help him and he did so and then his

1 fingerprints showed he was a fugitive and they arrested
2 him. That is what I knew about it.

3 Q. If the records reflect that with regard to that
4 murder in South Dakota that petitioner initially lied to
5 authorities about that, that would further in your mind
6 cause concern about his voracity, wouldn't it?

7 A. It is depending what he is lying about, under what
8 circumstances and what the lies were. Certainly if it
9 was just a lie --

10 Q. If he was lying about the murder and saying it
11 didn't happen, that the victim committed suicide --

12 A. If he lied, did it, and really believed it
13 wasn't true and knew it wasn't true, just lied
14 blatantly then that would be a question about his
15 credibility.

16 Q. That would be something that is important to
17 you?

18 A. That is something I would like to know.

19 MR. BAKER: That is all, Your Honor.

20 THE COURT: All right. Mr. Baker, do you
21 have an out of town witness today?

22 MR. BAKER: Yes, Your Honor, we do.

23 THE COURT: Okay.

24 MR. BAKER: I might need --

25 THE COURT: You might need what?

1 MR. BAKER: I might need a moment to
2 consult before putting him on.

3 THE COURT: I am trying to accommodate
4 travel schedules.

5 Go ahead, Mr. MacLean.

6 MR. MACLEAN: I will be very brief.

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EXAMINATION OF ROBERT SADOFF

BY MR. MACLEAN:

Q. Dr. Sadoff, I would like for you to, based upon the cross-examination that has been given, summarize again based upon your experience and your review of the records the reasons why you have come to the conclusion that the defendant, or James Jones was insane at the time.

A. Very briefly. It is his total history, his personality, the disorder, the illness he had, the history of his dissociations which are replete in the records and not because he killed anybody, just because he dissociated.

He has that kind of history and has evidence that under stress the kind of illness that he has could dissociate, could become psychotic and he could be rendered to act in an uncontrolled fashion.

The discreteness of his memory impairment that has been consistent over time and had different records indicated to me and confirmed by the hypnosis he did have a dissociated disorder at that time, that in my opinion it would have rendered him unable to have the state of mind necessary, that is he would have lacked substantial capacity to conform his conduct to the requirements of law because he was so upset by what was

1 going on around him that he lost, in a sense.

2 That is the vernacular quotes. He lost.

3 That is my opinion why I think he was
4 insane.

5 Q. Will you please look at Exhibit 8, Defendant's
6 Exhibit 8 shown to you.

7 A. I have it.

8 Q. Exhibit 8 are the records from the period James
9 Jones was 14 years old and was sent to Western State
10 Hospital in Washington?

11 A. Yes.

12 Q. Would you look at the third page which was one of
13 the pages that Mr. Baker showed you?

14 A. That the one with the page number 39?

15 Q. Yes. It says diagnosis impression, on December
16 11, 1964, sociopathic personality.

17 Do you see that?

18 A. Yes.

19 Q. What is a diagnosis impression? Is that a final
20 diagnosis?

21 A. No. It is what people say when they are having
22 their first impression about what his diagnosis could
23 be.

24 Q. Would you look at the page immediately before
25 that?

1 A. All right.

2 Q. Do you see it says down near the bottom final
3 personality pattern disturbance, paranoid personality?

4 A. Yes.

5 Q. Is that the same as sociopathic personality?

6 A. Not at all.

7 Q. What is the difference?

8 A. The difference is paranoid personality is one who
9 acts out of suspiciousness, mistrust and always kind of
10 hyper vigilant about what is going on.

11 The sociopathic is another name for
12 antisocial, which means they have no regard for authority
13 and that they commit a number of antisocial behaviors
14 among other things.

15 Q. Would you look now at the page that is date
16 stamped number 41?

17 A. I have it.

18 Q. And do you see in the middle the impression which
19 reads as follows; the senior committee met on Friday,
20 December 18, 1964, reviewed the information and
21 impressions and agreed that James was not psychotic,
22 not a psychopathic delinquent person but most probably
23 had a personality disorder described as paranoid
24 personality.

25 Do you see that?

1 A. I do.

2 Q. What does that tell you about what the people at
3 Washington State -- Western State Hospital did after they
4 formed their initial impression?

5 A. They examined him and evaluated him and decided he
6 was not an antisocial personality disorder or sociopathic
7 but paranoid.

8 Q. I will refer you to a page that is little hard to
9 read, date stamp number 62, I believe.

10 A. All right.

11 Q. That is an order from the juvenile court?

12 A. Right.

13 Q. And would you just follow with me starting in
14 the middle paragraph. Appearing to the court that J. W.
15 Rose, M.D., clinical director at Western State Hospital
16 reports that the senior staff had considered all
17 reports, psychological tests, interviews, et cetera,
18 with James Jones, Junior and his family and he was
19 found not -- he was not found to be a psychopathic
20 delinquent child, it is therefore adjudged and ordered
21 by the Court that the order of the 11th day of December,
22 1964, shall be rescinded pertaining to the said James
23 Jones, Junior and he shall remain at the Western State
24 Hospital as a voluntary patient on written application
25 by his parents.

1 Do you see that?

2 A. I do.

3 Q. Now, I am going to ask you finally to go to page
4 44.

5 A. I have it.

6 Q. Do you remember when Mr. Baker asked you on cross
7 about the mother and fact the parents were present at the
8 time during his period when he was at the hospital? Do
9 you remember that?

10 A. Yes.

11 Q. All right. The paragraph, in the main paragraph
12 there under social work note. Jim was home overnight.
13 He stayed close to home but maintained he felt
14 comfortable, especially toward father. It was not
15 possible to use family therapy as an aid to Jim in
16 problem solving between the parents partly because
17 Sergeant Jones maintains that Jim is the one who needs to
18 change.

19 This attitude on his part is reinforced
20 about his own perception of himself in his job as a
21 Military Policeman. He said in the family session how
22 much juvenile difficulty he sees at Fort Lewis and
23 expressed his concern for Jim's adjustment in a way that
24 gave Jim confidence in himself and gave the message that
25 father was boss.

1 Do you see that?

2 A. Right, I do.

3 Q. And so based upon your experience as a
4 psychiatrist and your years of experience in forensic
5 psychiatry and also therapy as a therapist, does appear
6 to you the parents were having -- were not submitting to
7 therapy as would have been helpful to James Jones?

8 A. That is what it appears to be, yes.

9 Q. Now, would you please look at Exhibit 7.

10 A. I have it.

11 Q. Will you look -- these are not date stamped?

12 A. Mine are.

13 Q. Page sort of in the middle. I will count the
14 pages. Page 16.

15 A. Request for psychological services.

16 Q. Right. This is from the records in 1965 when
17 James was 15 years old, I believe, and in Philadelphia.
18 These are from the Sayer Junior High School. Do you see
19 that?

20 A. I do.

21 Q. Do you see the first sentence there, James has
22 little control. His behavior is symptomatic of deep
23 disturbance. The counselors referred the mother to the
24 childrens' and adolescents' clinic at PGH and to the
25 EPPI?

1 A. That is Philadelphia Hospital in the Eastern
2 Institution.

3 Q. In the mother's remarks it says there is evidence
4 that the father is unable to accept the fact that his son
5 is in serious need of therapy.

6 Do you see that?

7 A. I do.

8 Q. Do you see the last paragraph, James is a
9 frightened child who attempts to cover his fears and to
10 hide his low opinion of himself. From the personality
11 assessment, quote, the student identified himself with
12 wild animals. They were his friend, his only friends.
13 They were free and uncaged. He felt he was caged and
14 hated humans and their social structure.

15 Do you see that?

16 A. I do.

17 Q. How does that fit in with your assessments of
18 James and his mental condition?

19 A. Well, that clearly supports the opinion that I
20 have given about his behavior and his personality
21 disorder and the fact that he had these affinities for
22 wild animals while he was very young and frightened and
23 low esteem and difficulty in adjusting with no control.
24 No control of his behavior.

25 Q. Is this consistent with a borderline and post

1 traumatic stress disorder?

2 A. Yes, it is.

3 Q. Reference was made to the New Jersey State
4 Hospital in Trenton in '67 when James was -- he would
5 have been 16 years old and there was a reference in there
6 that Mr. Baker asked you about or mentioned during the
7 cross-examination where it was reported that James Jones
8 suffered a homosexual panic?

9 A. Right.

10 Q. Can you explain to the Court what a homosexual
11 panic is?

12 A. Yes. A home homosexual panic isn't exactly what
13 it says.

14 It is a condition that we see in
15 schizophrenic patients that believe they are being
16 homosexually attacked when in fact they may not and they
17 go into a panic and become psychotic. They are not
18 really in touch with reality.

19 It is a very serious illness and needs
20 treatment, usually hospitalization.

21 Q. Dr. Sadoff, would the experience of a homosexual
22 panic at the age of 16 be indicative of a mental illness
23 or serious mental problem?

24 A. Yes, it would be, very serious.

25 Q. Dr. Sadoff, based upon your hours of meeting with

1 James Jones, based upon your review of all the records,
2 based upon your many years of experience as a
3 psychiatrist, is there any question in your mind that
4 James Jones suffers from extreme mental or emotional
5 disturbance?

6 A. No question in my mind about that, no.

7 MR. MACLEAN: Thank you. Hold on.

8 Your Honor, that is all. Thank you.

9 THE COURT: All right. Mr. Baker,
10 anything?

11 MR. BAKER: That is all.

12 THE COURT: You may step down, Dr. Sadoff.
13 Thank you.

14 Mr. Baker, are you going to call a
15 witness? Is that how we were going to proceed. I know
16 we were going to accommodate --

17 MR. BAKER: If I could have a five-minute
18 break?

19 THE COURT: Yes. I wanted to see if it
20 was your turn. Have you all agreed about that Mr.
21 MacLean?

22 MR. MACLEAN: Yes. We also have Dr. Diana
23 McCoy, mitigation expert, and will testify to the social
24 history. She did follow Dr. Martell. We have discussed
25 this before.

1 I would like Dr. Sadoff to sit through Dr.
2 Martell's testimony and he may wish to call him in
3 surrebuttal. Dr. Sadoff can stay this evening and he can
4 be back in court tomorrow.

5 I want to, for scheduling purposes, bring
6 one matter to your attention. We have flying in tomorrow
7 morning -- and I can't remember when she arrives -- 8:15
8 at the airport Nancy Lancaster, half sister of James
9 Jones, as a witness.

10 Tomorrow is the only day she can come into
11 Nashville for this hearing.

12 THE COURT: All right.

13 MR. MACLEAN: She is here for most of the
14 day. I don't know how long her testimony will take.
15 Probably about two hours, I am guessing.

16 I wanted Your Honor to be aware of that.
17 She is an important witness for us.

18 THE COURT: All right. Let's take a 10
19 minute break and then we will proceed from there.

20 (Whereupon, the hearing was in recess.)

21 THE COURT: What is the the plan for the
22 witnesses we have talked about?

23 MR. BAKER: Your Honor, at this time we do
24 not anticipate calling Dr. Martell. We just made the
25 decision. I think we will proceed with Dr. McCoy. Dr.

1 Martell is going to remain and listen to Dr. McCoy.

2 There might be a chance to recall him after her.

3 That is not the plan at this time.

4 THE COURT: All right. If he is called --
5 if he is not called, Dr. Sadoff doesn't need to be
6 called.

7 MR. MACLEAN: We may end up saving some
8 time here.

9 May I ask how late we are going to proceed
10 today?

11 THE COURT: We are going to go until we
12 finish all the witnesses. We will be here until there
13 are none. If not, we will just have -- Dr. McCoy is the
14 only witness? That one is within your control. I don't
15 know the answer to that.

16 MR. MACLEAN: The reason I asked, this
17 was -- we thought we were going to be taking up a good
18 part of tomorrow on the psychiatric proof and mitigation
19 expert testimony. With this development -- I am trying
20 to find my list here -- we may need to get in touch with
21 some witnesses to rearrange sequence.

22 THE COURT: We will call Mr. Camp. We
23 know where he is.

24 MR. MACLEAN: That's right.

25 MR. REDICK: Your Honor, we were just

1 debating how well we will be able to -- we can take it up
2 later or now -- how we can juggle our proof.

3 We were anticipating most of the day
4 tomorrow being taken up with psychological proof. It
5 appears now it won't be. We have one witness from
6 Atlanta coming in and that was all we had planned for.
7 We could get Mr. Camp over here. Mr. Dinkins is a
8 witness we could call. He is in trial but thought he
9 might be able to be released by Judge Gayden in circuit
10 court. We will have to get word on that.

11 It might be, with the Court's permission,
12 that we would have a short day tomorrow.

13 THE COURT: Well, obviously I would prefer
14 not to run out of witnesses. If we run out of witnesses,
15 we run out of witnesses. I think some of the testimony
16 has been longer than expected. For instance last Friday,
17 we expected two hours and I think we went six or so.
18 Some things are unpredictable. We can just play it by
19 ear.

20 I will tell you, I am not going to yell
21 and scream and pound the desk if we have to finish
22 early. I understand things are a little unpredictable.
23 But if we have witnesses, I want to move forward with
24 them and I want everyone to use good faith to try to get
25 witnesses.

1 I understand if Mr. Dinkins is in closing
2 argument before a jury, hypothetically it would be hard
3 for him to get here. If he is third lawyer on a motion
4 to get permanent/partial disability on a Workers' Comp.
5 case in state court, I would have a different view.

6 MR. REDICK: It is a medical malpractice
7 lawsuit. It started last Monday and they hoped to
8 complete the proof at the end of this week. He told me
9 he put Judge Gayden on notice he might have to leave to
10 come over here.

11 THE COURT: All right. Let's proceed with
12 Dr. McCoy.

13 We can have Mr. Camp called to be
14 available tomorrow if that is acceptable. I don't want
15 to put on your case for you. He seems to be more easily
16 available, from what has been represented to me. And we
17 have the half sister who will be here mid-morning. It
18 strikes me we would be able to put Mr. Camp on while
19 waiting for her.

20 Does that make sense?

21 MR. MACLEAN: That probably would be our
22 preference. Logically he should have testified
23 yesterday. But it really depends on his schedule.

24 THE COURT: From what I have heard so far,
25 I don't anticipate he would be an extremely lengthy

1 witness. Part of the testimony was, he was a late
2 assistant to Mr. Barrett as opposed to on the job for a
3 long period of time, but he was, of course, through the
4 entire trial.

5 So, I would guess he would last a couple
6 hours rather than all day. Is that right?

7 MR. REDICK: I think that is right, Your
8 Honor.

9 THE COURT: You know better than me. I
10 also didn't think some other things would go as they
11 did.

12 MR. REDICK: Nor did I.

13 THE COURT: Well, I won't say anymore
14 about that. I recognize everyone is trying to work in
15 good faith here. As long as I continue to pick up on
16 that spirit, I will work with you. I appreciate that.
17 If that evaporates, I will have a different attitude.

18 While we have witnesses let's put them on.
19 I mean, something may pop out of Dr. McCoy's mouth to get
20 Mr. Baker excited and we will be here until midnight. I
21 don't know. We will just see.

22 MR. REDICK: I will put the Court on
23 notice in regard to witnesses. We have two witnesses
24 coming from out of town Friday. Sarah Walton from Maine
25 and Susi Bynum from Memphis.

1 Ms. Walton's flights arrangements have
2 already been set. Ms. Bynum has a daughter. She is a
3 single parent, basically, and she made special
4 arrangements to get off work that day.

5 Based upon our schedule, that is what we
6 thought would be the best time.

7 THE COURT: Let me be real direct about my
8 concern. To the extent this appears like it is not going
9 to be concluded by Friday, we are all going to be working
10 really late hours. To the extent that it will be
11 completed by five o'clock on Friday, I don't mind if
12 there are some gaps. I have lots of other things I can
13 be doing. I am not going to go out of business for lack
14 of work. I am obviously not going to hold any trials in
15 the middle of this trial.

16 So, if anybody gets the opinion as we
17 march forward that we are not going to be able to finish
18 before Friday then we need to have a discussion about how
19 we can try to achieve that goal.

20 That is the only thing that will give me
21 some concern. If we wind up everything in a few short
22 days, that is okay. I am up to my eyeballs in motions
23 for summary judgment, motions to dismiss and motions to
24 quash and motions to have motions, motions not to have
25 motions. And I have plenty to do.

1 If this creeps over to next week then I
2 have got some serious difficulties. I have got a six
3 week criminal trial that is supposed to start on Tuesday.
4 It is my firm determination that we will conclude the
5 proof in this case before that begins.

6 Now, between now and then I am happy to be
7 flexible how we are going to accomplish that. From what
8 I heard so far that shouldn't be a problem. Nobody told
9 me it will be. If I am wrong, speak up.

10 MR. REDICK: Perhaps I should bring this
11 to the Court's attention at this time.

12 We do have one witness that was identified
13 last week that we will take out of order.

14 THE COURT: Right.

15 MR. REDICK: Your Honor, we had on our
16 witness list Dr. Michael Blankenship. The state objected
17 to his testimony.

18 I would like to offer to the Court that we
19 could take his testimony by deposition. I don't know
20 whether the Court wants to hear us further on that or I
21 need to say more.

22 THE COURT: Let's put Dr. McCoy on and
23 then after we take her testimony we can -- I will
24 entertain that discussion, and it may be more appropriate
25 to have that discussion while we have some down time.

1 In terms of the witness that would be out
2 of order, that is possible we may be able to do that
3 tomorrow as well. I had not forgotten we were going to
4 do him out of order. That may be possible to do tomorrow
5 as well. So that might be able to fill the day.

6 In terms of testimony by deposition, we
7 will just have to hear from Mr. Baker about that. I
8 don't recall. I remember the objection. I don't recall
9 the substance of it.

10 Tell me, as long as we are talking about
11 it, give me the brief version of it.

12 MR. BAKER: I believe this witness is
13 being called with regard to a jury instruction issue that
14 the Court has determined in motion for summary judgment.
15 I do not believe --

16 THE COURT: This is dealing with the
17 unanimous jury instruction?

18 MR. BAKER: Yes, sir. We don't believe
19 that is at issue at this proceeding and therefore --

20 THE COURT: It appears to me Mr. Baker is
21 right, it is no longer an issue. You are entitled to an
22 offer of proof. I will give you that opportunity to make
23 an offer of proof.

24 Now, I would like to do that this week.
25 If we run out of time this week, we can do it potentially

1 by deposition. But, frankly, I would rather hear the
2 offer of proof live and see it unfold if possible.

3 MR. REDICK: Of course if the Court wants
4 to consider an offer of proof, that is what we will do.
5 Our position is that the Court's ruling on summary motion
6 was not a final order, not appealable order and we can
7 file a motion to reconsider and the Court can reconsider
8 it.

9 I don't know that there is any reason to
10 present proof for the Court to consider. That is a
11 decision for you to make.

12 I will say this, Your Honor. Because as I
13 recall the events that transpired unexpectedly last week
14 that took up a lot of counsel time and some considerable
15 court time, we have not had an opportunity to prepare the
16 witness that was going to be taken out of order. We just
17 put him on hold. I haven't even talked to him about his
18 testimony.

19 That is part of the problem with Mr.
20 Blankenship, part of the reason -- I will be more than
21 happy to call him as a witness. I am not sure we can get
22 those two witnesses ready to testify this week because of
23 the problems we have had over the last two weeks of
24 trying to get ready.

25 I was under the impression coming in to

1 court that the Court made observations that we will do
2 what we can do about getting the proof in this week,
3 which I assure the Court we have done.

4 THE COURT: Well, in terms of offer of
5 proof, that can be done any number of ways. One way is
6 to summarize what you think the proof would be and that
7 is an offer of proof.

8 We -- let me think about all that.

9 In terms of the witness out of order, if
10 we have a half day off tomorrow that will give you a half
11 day to prepare for it. That will solve that problem.

12 But in terms of the unanimous jury
13 instruction issue, the state of the record now is a
14 motion for summary judgment was granted. If you want me
15 to hear testimony by way of an offer of proof, I will
16 hear it.

17 If you just want to make an offer of proof
18 in so other fashion, I will consider that. One way to
19 make that offer of proof is by deposition.

20 That is the state of the record now. What
21 motion somebody may make and how I might rule on it is
22 premature for me to form an opinion about it.

23 MR. REDICK: Judge, about the witnesses
24 out of order. I know we are jumping back and forth. I
25 was under the impression we wouldn't take this testimony

1 during this hearing because of the nature of the
2 testimony that he offered last week.

3 As I understand the situation right now,
4 Mr. Boyd and Mr. Beard are on the state's witness list.
5 For all I know they will be here at the courthouse on the
6 end of the week or --

7 THE COURT: Let's have that discussion
8 later in camera. I think instead of all this trying to
9 talk in code --

10 MR. REDICK: I don't want this witness
11 here at the courthouse if they are going to be around.

12 THE COURT: I agree. That is a legitimate
13 concern and we will take appropriate action.

14 MR. REDICK: As long as the Court was
15 aware.

16 THE COURT: There are ways to deal with
17 those issues and I have got some thoughts on it. I want
18 to have a discussion in camera about how to do that and
19 if anything else has occurred in the interim that may
20 need to be brought to my attention.

21 But we will find an appropriate way to
22 take that testimony, if you still intend to put it on,
23 and put it on in a fashion that is consistent with all
24 our prior discussions without any risk for the evidence
25 being compromised in any way. I understand that concern

1 and I intend to accommodate it. I don't know how we will
2 do it yet. I want to have that discussion later.

3 MR. REDICK: Thank you.

4 THE COURT: Mr. MacLean.

5 MR. MACLEAN: Yes, I would like to call
6 Dr. Diana McCoy.

7 THE COURT: Welcome.

8 (Whereupon, the witness was duly sworn.)
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EXAMINATION OF DIANA MCCOY

BY MR. MACLEAN:

Q. Dr. McCoy, because it is getting late in the afternoon, I am going to go through your background fairly quickly. My only concern is I might push the court reporter hard. I will try to avoid that.

You are Dr. Diana McCoy. You live in Knoxville, Tennessee, correct?

A. That's correct.

Q. And you have a Ph.D. in clinical psychology?

A. Yes.

Q. You received your degree at State University of New York at Potsdam in 1972 and received your Ph.D. in clinical psychology from the University of Tennessee in 1977?

A. Yes.

Q. You are licensed psychologist with the State of Tennessee and you have board certification in assessment psychology.

Can you explain that?

A. It's a organization that overseas people who do assessment of psychology, and I have been board certified in that.

Q. You taught introductory psychology at the University of Tennessee, Knoxville in the fall/winter of

1 '72, '73 and the spring of '73.

2 You have done clinical work at Lakeshore
3 Mental Health Institute in Knoxville.

4 You are a graduate assistant, multimodal
5 psychotherapy and psychological assessment in '73-74.

6 You did clinical work at the University of
7 Tennessee Psychological Clinic in Knoxville where you
8 were a graduate assistant from June, '74 to June, 1975.

9 And you did work -- counseling work at the
10 University of Tennessee Counseling Center in Knoxville as
11 a graduate assistant from September, '74 to June, 1975.

12 You did an internship at Western Reserve
13 Mental Health Center in Kansas City where you did
14 rotation on adult inpatient, crisis and adolescent
15 inpatient units from September, '75 to August, '76.

16 You were a graduate assistant
17 psychological assessment of infants, children and adults
18 as well as educational and remedial services, Birth
19 Defect Center of Knoxville, September, '76 to June, 1977.

20 And since then you have been in private
21 practice as a psychologist and you have specialized in
22 child and family services in Knoxville, is that
23 correct?

24 A. I did that for a period of time. My specialty at
25 this point is assessments in forensic psychology. I do

1 that almost exclusive. I stopped seeing patients in
2 therapy about five years ago.

3 Q. How long did you see patients?

4 A. Until I got my degree in '77 until last year.

5 Q. What kind of forensic psychology work do you do?
6 What kind of cases do you work on?

7 A. I do pretty much the gambit of cases, civil cases,
8 personal injury cases, employment discrimination cases,
9 custody work. I do work in the criminal law as well.

10 Q. Have you worked on capital cases before?

11 A. Yes. I have worked on about 20 cases.

12 Q. What capacity have you worked on capital cases?

13 A. I have worked at the trial level as an expert
14 witness, I have worked at the trial level as psychologist
15 doing mitigation work. I was court appointed in one case
16 to do the work.

17 I have several post conviction cases at
18 both the state and federal level. It is 20 to 22 cases.

19 Q. You are a member of the American Academy of
20 Forensic Sciences and the International Society for the
21 Study of Dissociation, correct?

22 A. Yes.

23 Q. You have been a consultant for the Knoxville
24 Police Department where you did psychological testing
25 for the Knox County Juvenile Court from '83 to 89; with

1 the Department of Human Services, 1983 to 1984, enhanced
2 911.

3 What is that?

4 A. We in Knoxville were starting 911 and I did all
5 the assessments of the people that they hired for those
6 positions.

7 Q. That was from 1986 to 1990. And you did work for
8 the -- consulting work for Florence Crieghton Agency from
9 '88 to 1990 where you performed services in
10 psychotherapy and psychological assessments for
11 residents, is that correct?

12 A. Yes.

13 Q. And then you worked at Overlook Center, Diagnoses
14 and Evaluation Center from '92 to '93 where you did
15 psychological assessments of juvenile status offenders,
16 correct?

17 A. Yes.

18 Q. And you have hospital privileges at East Tennessee
19 Children's Hospital, Fort Sanders Regional Medical
20 Center, Saint Mary's Medical Center, Fort Sanders Park
21 West Medical Center, is that correct?

22 A. Yes.

23 MR. MACLEAN: Your Honor, I would like to
24 make Dr. McCoy's curriculum vitae Exhibit Number 140,
25 please.

1 THE COURT: All right. That will be
2 marked number 140. I will ask Dr. McCoy to pull the
3 microphone down a little bit.

4 A. I need something to sit on. This is not made for
5 little people.

6 Is that better?

7 THE COURT: Yes.

8 Q. Dr. McCoy, how did you get involved in this case?

9 A. You called me and asked to discuss this case with
10 me.

11 Q. Do you recall about when that was?

12 A. I believe it was the fall of '96.

13 Q. How would you define your job in this case?

14 A. My job as I understand it was to collect records
15 of Abu-Ali, to interview people who are familiar with him
16 and his background, of course to talk with him and
17 collect a social history and then to put the documents
18 together in some sort of integrated manner that reflect a
19 picture of this individual, who he is, how he got to be
20 where he is now.

21 Q. Did you prepare a social history of Abu-Ali?

22 A. I did.

23 Q. What is the role of a social history in a case of
24 this sort?

25 A. Role of the social history is to present a picture

1 of this individual, who this person is, hopefully, to the
2 jury so that they have a sense of this person's humanity,
3 this person as an individual, how he got to be who he is,
4 how he got to be in the situation he was in.

5 Q. Is your role also to consult with Dr. Sadoff the
6 psychiatrist in this case?

7 A. Yes.

8 Q. And was your social history useful in connection
9 with his evaluation of Abu-Ali?

10 A. I would like to think so. He probably could
11 answer that better than I could.

12 Q. In preparing the social history, could you tell
13 the Court what you did?

14 A. I collected a number of documents, and they are
15 listed at the end of this called guide to index. There
16 are 35 documents or 35 sections. Within some of the
17 sections there is a large number of documents, for
18 example, number 24 is State of Tennessee versus James Lee
19 Jones and lots of different documents pertinent to that
20 particular category.

21 I have a time line at the end where I
22 tried to summarize some of the most important points. I
23 have made some little charts and tables because it is a
24 fairly complex record, and I tried to simplify it.

25 For example, one I have institutions from

1 birth, '85 so you can see at a glance the different kinds
2 of institutions where Abu-Ali has been. I have a little
3 summary of the psychiatric evaluation and treatment that
4 he has received over the years starting from when he was
5 14 and when he was in the Army and after he got in
6 trouble in the Army and the different people that saw him
7 when he was in federal prison.

8 Again, although it is included in the main
9 text, I have tried to summarize it so someone could look
10 at it and try to get an idea of some of the places he has
11 been.

12 I have a time line of his criminal
13 convictions. Same purpose, for the purpose of
14 simplifying it so it is easy to understand.

15 I have a page on his educational history.

16 Then the main text is divided into several
17 categories. I tried to group this together in terms of
18 what his family history is, his extended family history,
19 his brothers and sisters and half brothers and sisters, I
20 have his section on his developmental history, section on
21 the military history, prison history, parol history, a
22 section that deals with the homicide of Patrick Daniels
23 and a section on the prison adjustment.

24 MR. MACLEAN: Your Honor, I would like to
25 offer into evidence the social history prepared by Dr.

1 McCoy in this case.

2 THE COURT: All right. That would be
3 exhibit what?

4 MR. BAKER: No objection.

5 MR. MACLEAN: Exhibit 141.

6 THE COURT: All right.

7 Q. Dr. McCoy, before we get into the social history,
8 did you also perform psychological tests on Abu-Ali?

9 A. Yes, I did some testing.

10 Q. Can you tell the Court about the testing you did?

11 A. Yes. Over a course of six different interviews
12 totaling about 19 hours, I interviewed him and did
13 psychological testing. There has been quite a bit of
14 testing done on him in the past as recently as '93 that
15 I didn't want to duplicate, and no reason to.

16 I gave him the Wechsler Adult Intelligence
17 Scale and he scored in the average range; academic
18 achievement test; also a recognitions skill test, high
19 school level; spelling, eight grade level; arithmetic,
20 fifth grade level.

21 I gave him an MMPI. I was very interested
22 in the fact he had the same elevated F scale that he has
23 had in the past whenever he has been given the MMPI
24 beginning when he was 14. He had this when he went in to
25 federal prison, the same test with Dr. Craddock at Middle

1 Tennessee Mental Health Institution he had the test with
2 Pam Auble as well. I must be the fifth or sixth one.

3 He seems to have the same profile that is
4 borderline invalid. The F scale is a scale that measures
5 odd or unusual kinds of circumstances and a high F scale
6 can mean malingerer or a cry for help. He consistently
7 has this same pattern in his MMPI.

8 I also gave him another personality test
9 that suggested again a tendency to perhaps magnify the
10 level of experience, also could reflect extreme
11 vulnerability. It shows he had a history of
12 disappointments in his life, that he failed in his
13 efforts to find a niche in life.

14 He is conflicted between the desire to
15 withdraw from relationships and desire to be independent.
16 He has a lot of emotional turmoil, bizarre behavior,
17 magical thinking, very wary regarding social encounters,
18 poor self-worth, tendency to withdraw from protecting
19 himself from loss. He is discontent.

20 He is subject to impulsive outbursts. He
21 is feels persecuted, looks down on others. Very
22 sensitive to being disrespected by others, always on
23 guard somebody might ridicule him. There was some
24 delusional disorder. Very quick to be on guard as to
25 whether others might betray him.

1 The thinking shows a bizarre, disorganized
2 quality at time. He is resentful and what is known as a
3 hostile dependency. In short, he showed the kind of
4 characteristics that I think Dr. Sadoff described this
5 morning of the borderline personality who is paranoid
6 and narcissism, schizoid.

7 I was shocked how this particular test
8 reflected the Abu-Ali I came to know and also through the
9 reading of the records.

10 Q. Are those reports reflective of mental pathology,
11 psychological problems?

12 A. Yes.

13 Q. How would you scale those? Are they moderate
14 problems, severe problems?

15 A. I believe they are very severe problems.
16 Certainly I think as we get into the social history and
17 explore some of the etiology of this it can become more
18 clear how he developed -- through no fault of his own --
19 how he developed these characteristics over the years.

20 Q. Why don't you go through and explain to the Court
21 the social history. It is in written form.

22 If you could explain it in your words to
23 the Court, I think that would be very helpful?

24 A. This is, of course, a lengthy report. I don't
25 want to just read it. I do want to summarize it. I will

1 start with the family history. Because I think that is
2 important.

3 I think one of the most striking
4 characteristics to me when I first met him is how little
5 he knew about his family. He didn't know his parents'
6 birth dates. He didn't really know where they came from,
7 where they were -- he knew a little bit.

8 He knew his father had joined the service
9 when he was young, kicked out and joined again.

10 I was really struck by the fact he didn't
11 seem to know basic knowledge and just didn't seem to be a
12 family that either communicated with each other very much
13 about these kinds of things. Somehow he didn't get this
14 knowledge.

15 A lot of my information came from Nancy
16 Lancaster who is his half sister. I met Nancy in Atlanta
17 and had extended conversations with her. And it was a
18 very interesting story she had to tell about her mother
19 Jessie who was Abu-Ali's mother.

20 Nancy and her two brothers are the product
21 of her mother's first marriage. Apparently by the story
22 Nancy tells, she was an infant and hears this from other
23 family members. Mother Jessie took the children one day
24 in a taxicab, took them to the woods and basically left
25 them in the woods; and went off and left her husband and

1 left the family. And lucky the taxi driver, as the story
2 goes, came back and got the kids and the children went
3 into foster care. They went with family members.

4 Nancy says mother was located at some
5 point in her infancy and while living with her mother and
6 boyfriend at the time that the boyfriend was abusive of
7 Nancy and threw her downstairs and she broke both her
8 legs and was in a cast from the neck down, wasn't
9 supposed to walk again and she still has a steel plate in
10 her head from this.

11 She did not have very much contact with
12 Jessie, Abu's mother while growing up and really didn't
13 meet her again until she was 12. The other two children,
14 her brothers, also had very little contact with their
15 mother.

16 Apparently Nancy went for years of not
17 being able to deal with the issue of her mother because
18 of this abandonment and went into therapy to deal with it
19 and really had a difficult struggle dealing with her
20 mother's treatment for herself and her siblings, and has
21 been able to establish a relationship with her in the
22 recent years.

23 I have been struck by the fact she treats
24 her mother with kid gloves, very careful not to offend
25 her and say anything that might rile her up because

1 Jessie has a reputation of being quite touchy. If you
2 say anything to her, she cuts you off.

3 One of the sons from the first family,
4 the first three kids, died. She refused to to go his
5 funeral. The other brother finally established a
6 relationship with his mother in the recent years as
7 well.

8 Nancy had contact with her stepfather,
9 Abu-Ali's father. He died in '92 of a heart attack. She
10 was aware of the relationship between her mother and her
11 stepfather as she got to know them more and more. They
12 were heavy drinkers. Both of them were known to have
13 affairs.

14 It was well-known in the family that
15 James, Senior Abu-Ali's father was quite abusive of his
16 wife.

17 Abu-Ali also talks about the abuse he
18 witnessed between the parents, his father's brutal
19 beatings of his mother and Abu-Ali trying to intervene.

20 He has a brother Mark, one of the three
21 from the second family, which is Mark -- first Sylvia,
22 three years younger than Abu-Ali and Mark, four years
23 younger.

24 Mark wrote an affidavit. He is dead now.
25 He wrote an affidavit and corroborated there was a good

1 deal of physical abuse between the parties and both
2 parents were heavy drinkers.

3 It is interesting, too, that the two
4 siblings, Abu-Ali from the second family also have had
5 really serious problems.

6 So, this is not a family where just one of
7 the kids was a bad apple or the black sheep. This is a
8 dysfunctional family where all three children who were
9 raised by the mother as opposed from the first family
10 that fared somewhat better not being with Jessie and
11 James, Senior.

12 But Sylvia, the one younger, has had
13 severe problems. She has been in and out of mental
14 hospitals, she is violent and has a diagnosis, I believe,
15 of bi-polar disorder. She is supposed to be on Prozac
16 and Librium.

17 Nancy believe she is dying from leukemia
18 now. She is troubled and has had a troubled life.

19 Mark is four years --

20 THE COURT: He is the half brother?

21 A. Full brother. Second family, yes, sir. She is
22 the mother and James, Senior is the one who was so
23 abusive. He is the father of Abu-Ali, Sylvia and Mark.

24 Q. Just to be clear, Nancy is one of three siblings
25 by the mother from a prior marriage and then you have the

1 second family, three children by the same mother and a
2 second marriage and James is the oldest of the three
3 children, right?

4 A. Yes. Mark became a military career man like his
5 father. He had 10 children. A few years ago, I think in
6 '96, '95 or '96 after his wife died, he was accused of
7 sexually and physically abusing his children. He was
8 held in jail for three days for this.

9 When he was released, he went home and
10 within a couple days he shot himself and killed himself.
11 So he is, unfortunately, not available to testify
12 directly as to the abuse in the home.

13 He did write an affidavit a few years ago
14 where he described the abuse that both he and Abu-Ali
15 received at his father's hands.

16 According to Nancy Lancaster her half
17 brother Mark also had a terrible temper. He would
18 explode into rages.

19 He had a lot to say about his parents.
20 One of the things he said to Nancy is, quote, you don't
21 know what kind of hell we lived in. He described his
22 parents as, quote, mean as hell.

23 I actually was able to establish contact
24 with Jessie. I knew she wanted nothing to do with
25 Abu-Ali. That was made clear to me.

1 Nancy was reluctant to introduce me to her
2 mother because she was so afraid she would break her very
3 tenuous relationship with her mother, this relationship
4 that she only formed within recent years.

5 But finally I did get her phone number and
6 I did call her. It was -- she was very angry. Jessie
7 was quite disturbed. I didn't get much information from
8 her.

9 Her basic approach was that the three
10 children from the second family and all their problems,
11 that that was their own fault, they had a wonderful life;
12 she said that Abu-Ali never had any kind of treatment
13 which, of course, I know is not true. I know he was in
14 Western State Hospital initially.

15 I asked her why the first three children
16 from the first family were raised in foster care. Her
17 response before hanging up the phone, that is none of
18 your damn business.

19 Basically she didn't have a lot of
20 information that she was willing to contribute,
21 telling me about her son Abu-Ali and other children as
22 well.

23 Q. Could you now go into Abu-Ali's early life as far
24 as you could tell from your work in this case?

25 A. Abu-Ali, because his father was in the military,

1 was born on a military base and the family moved around
2 some. He lived in Fort Bragg, North Carolina and then
3 the family moved to Fort Leonard Wood Missouri where his
4 sister was born in '53. James, Senior, the father, was
5 stationed in Korea so Jessie and the three children moved
6 to Philadelphia for awhile.

7 When he was six or seven the family moved
8 to Fort Bragg. Then at some point they all moved to
9 Hawaii. He went to Hawaii in '62 when he was 12. He
10 recollects the abuse starting at a pretty early age,
11 starting when he was, I believe he said, five or six.

12 Before I get into the abuse, I want to
13 talk a little more about the family setting. He said
14 that they didn't celebrate birthdays. No birthday cake,
15 birthday card or presents. Christmas wasn't what he
16 called a T.V. Christmas. Parents would typically leave
17 on Christmas Eve and come home drunk.

18 He said his parents didn't go to things at
19 school like other parents did with other kids.

20 He doesn't remember getting any kind of
21 dental care. He doesn't remember much in the way of
22 doctor care but apparently he had a car accident and hit
23 his head when he was five and he might have gotten
24 stitches for this.

25 He remembers being bitten by a dog and

1 given shots. He thinks that his childhood was different
2 from that of his brother and sister because he thinks
3 that maybe as the brother and sister got older things
4 might have improved a little bit.

5 Mark actually said in his affidavit that
6 he was physically abused as well and he said that Abu-Ali
7 got the worst of it, he got more severe abuse than did
8 Mark.

9 Apparently the home life was very
10 militaristic. They called a bathroom a latrine, beds
11 were bunks. They have used military time such as 1200
12 hours. He would stand inspection when he was nine for
13 his father.

14 Abu-Ali started running away from home
15 when he was eight or nine. He said this was after a
16 particular severe beating. This is a pattern that
17 continued up until he ran away for the last time when he
18 was about 15 or 16.

19 He ran away several times when he lived at
20 Fort Bragg, several times in Hawaii, several times when
21 they lived in Washington. It usually followed
22 particularly severe beatings on the part of his father.

23 I had mentioned earlier that both the
24 parents had affairs and he remembers his parents fighting
25 about this a lot. He remembers his mother putting all

1 the children in the car because father disappeared for
2 days, going out looking for him. He remembers that when
3 his father was out on maneuvers that his mother would
4 have strange men in the house.

5 I think one of the saddest images he
6 described, really I think the point when he started to
7 learn to dissociate when he was very young and hog tied
8 and put in a closet with the head of his penis tied to a
9 piece of leather and other end tied to a clothing 2hook
10 in the closet.

11 He really doesn't remember why it was done
12 but it was very uncomfortable and he couldn't scratch or
13 do anything. He was very scared.

14 That is when he started to dissociate. He
15 would imagine himself somewhere else to get thoughts off
16 this disturbing situation he was in, this scary position
17 he was in and discomfort of having to scratch and not be
18 able to.

19 That is how people learn to dissociate.
20 That is how children, whoever, have been sexually abused,
21 they teach themselves to dissociate. They imagine
22 themselves -- while a picture is on a wall, they imagine
23 themselves in the picture.

24 So, dissociation is usually something that
25 comes from abusive situations, that people teach

1 themselves to get out of the situation.

2 That is when he started getting interested
3 in nature and going out in the woods and howling like a
4 wolf, something documented in his school records and that
5 Mr. Stiles that did one of the first psychologicals on
6 him when he was 14.

7 He said when he was in prison he was being
8 raped, this dissociation was something he continued to do
9 because he said I am a man and this was shameful. I had
10 to do something with my mind.

11 It has been mentioned earlier he remembers
12 the father stinging the end of his penis with a baseball
13 bat. He said this is because -- at the time he
14 understood it, he was touching himself a lot.

15 Rather than his parents talking to him
16 about that it, is not a nice thing to do, his father just
17 got real angry. This is how he trained him not to do
18 this anymore.

19 Abu-Ali has very strong feelings about his
20 parents and kind of parenting he received. He talked a
21 lot to me about his father not really being a father. He
22 is just a man. His mother wasn't just a mother, she was
23 just a woman.

24 This is a real predominant theme with
25 Abu-Ali. When I would talk with him, he would get worked

1 up about it quite a bit. It was a theme I see that runs
2 throughout the records far predating this particular
3 incident that he is before the Court with now.

4 Apparently the MPs did come to the house
5 periodically because his father would get in trouble for
6 abusing alcohol and fighting. The MPs -- he was an MP.
7 When they showed up, they didn't do anything except talk
8 to him. There was never anything that came of it.

9 When they moved to Hawaii, they moved
10 there in '59 when he was nine. He said his father got
11 into the habit to have him take off his clothes when we
12 beat him.

13 Apparently it was during this time his
14 father went to Vietnam, and this was probably one -- if
15 we can talk about positives in the childhood -- this is a
16 positive time in his childhood.

17 His father went to Vietnam for a period of
18 time and his mother was involved with her boyfriends and
19 so he was pretty well free to come and go as he pleased.
20 He enjoyed that period of time.

21 He ran away, I believe, twice in Hawaii,
22 once following a severe beating. He and Sylvia, the
23 sister, I have stated, the parents found out were having
24 sexual relations. The father found out about this when
25 Sylvia told him.

1 He was beaten very severely by his father,
2 by a Military Police strap and club. He said when his
3 father would beat him, he would say, get out, mom. His
4 mother would say, don't kill my child before she would
5 leave the room.

6 He said that he was never comforted by his
7 mother after the beatings and his brother Mark said this
8 in his affidavit as well, that when these beatings would
9 happen that Abu-Ali got no attention for it.

10 His father came home from Vietnam and the
11 family moved to Fort Lewis, Washington in '93. He was 13
12 then.

13 He started a pattern of running away
14 again. The beatings continued. There was an incident
15 where when his mother and Sylvia were gone and Abu-Ali
16 was kissing some girls that lived down the street and his
17 brother told on him, his father made him eat a pack of
18 Lucky Strikes and a cigar. When he vomited, he was told
19 to eat the vomit.

20 After this, he left home and was gone for
21 three weeks. He would sneak into peoples' kitchens to
22 get food. He said nobody would look for him when he ran
23 away because he was never reported as a runaway. The MPs
24 would bring him back.

25 At school he got into trouble because he

1 slipped into the girls' rest room. He was curious what
2 the female anatomy looked like. A girl saw him and
3 screamed and he ran out. Dad was called. As he came
4 back to his home, Abu-Ali ran away again. He knew what
5 the outcome was going to be.

6 There is also a clear indication of pretty
7 early sexual problems that started. Really when he was
8 in Hawaii, he started the stealing the dirty panties of
9 the next-door neighbor woman. That is something that
10 continued when he moved to Washington.

11 He would go to the lake and steal the
12 underwear from women after they changed their clothes and
13 left their clothes in the car. He would look up dresses
14 of women.

15 He said that after he moved to
16 Philadelphia and became sexually active when he was 15
17 that this behavior dropped out.

18 But clearly from an early age he doesn't
19 recall, distinctly recall any sexual abuse. There
20 certainly seems to be sexual overtones from having his
21 penis tied on a hook in a closet. Certainly seems to be
22 the beginnings of sexual problems in early childhood.

23 I said earlier that the records talk a lot
24 about his feelings toward his father. I believe Mr.
25 Baker brought that out this morning as well, or this

1 afternoon, rather, about when he was seen in Baltimore
2 that he complained about this cruel, tyrannical, career
3 Army man, that he felt him at every turn. And there are
4 many people that commented.

5 Dr. Bogan described Abu-Ali as disturbed
6 and high anger toward authority due to have a very strict
7 and punishing father.

8 He discussed his father with the defense
9 psychiatrist in 1972. He testified that Abu-Ali always
10 rebelled to authority because in his mind authority has
11 not been benevolent as symbolized by his father who is in
12 military police. He said that any sign of pressure he
13 will submit to harm himself or harm somebody else.

14 There was another -- this one undated --
15 evaluation done by the United States Department of
16 Justice, Dr. Angus and Einig who commented on Abu-Ali's
17 feeling being harshly treated by his father who was
18 unjust and unreasonable.

19 Dr. Resnick did a consultation in '70 or
20 '71 in Lewisbury. He was asked to evaluate him because
21 of repeated suicide attempts. Being yelled at, according
22 to the defendant, reminded him of his abusive father and
23 caused him to feel suicidal.

24 What finally got him into Western State
25 Hospital was after he was picked up by the MPs the second

1 time he ran away he was caught going into a female's
2 bedroom at three a.m. looking through her dresser drawer
3 and then turning the light on and somebody commented
4 later he seemed to do these things with the idea of
5 getting caught.

6 This is when he came to the attention of
7 the school psychologist at Dupont Junior High School,
8 Richard Stiles that did a psychological on him.

9 He saw him as very sick and need of
10 immediate commitment. This is my first report that I
11 have seen of Abu-Ali making sounds like an animal.

12 Mr. Stiles said the student's reactions
13 tend to be psychotic and paranoia trend and said early
14 rejection experiences appear to have warped the student's
15 personality development.

16 I think the testimony has already shown he
17 was initially committed and declared to be psychopathic
18 delinquent and that was changed to personality pattern
19 disturbance and paranoid personality.

20 When he was discharged in January of 1965,
21 he wasn't given any medication and there wasn't any
22 referral for follow-up because the family was moving to
23 Philadelphia. The father, James Jones, Senior had
24 retired.

25 This is when we come to the Philadelphia

1 part of his life. They moved to a rough part of the
2 town. There was discussion of gang warfare. Abu-Ali, a
3 little person, started carrying a knife. He said he
4 carried a machete Washington. I don't know how he
5 carried it.

6 He felt since being hurt at home, he
7 needed to carry something to protect himself. He joined
8 the police athletic league in Philadelphia so he could
9 defend himself. He did not go to school regularly. I
10 think here in Philadelphia his behavior really
11 deteriorated.

12 He not only was suspended from school or
13 expelled but put on home bound. The people at Sayers
14 School described him as a very disturbed boy that needed
15 treatment and markedly disturbed boy that has a stormy
16 career wherever he has lived. His behavior was very
17 disruptive.

18 He was found in the girls' rest room as
19 well. He threatened a student with a knife. He
20 disobeyed teachers.

21 Request for psychological services was
22 made and comment was that James has little control of his
23 behavior, is symptomatic of a deep disturbance of a
24 frightened child who attempts to cover his feelings and
25 hide his low opinion of himself.

1 He talks about his difficulties adjusting,
2 he always lived on military bases. This is just the
3 difference between day and night to him. He had a lot of
4 trouble accepting authority in school because of his
5 attitude toward his father.

6 Again there was quite a few -- he
7 remembers five beatings from his father and finally
8 running away when he was 15. He slept in basements of
9 school friends that would feed him and slip in and out of
10 basements at night.

11 He met up with a black man in the 30s
12 named Luther Collins who turned out was a homosexual and
13 Abu-Ali lived with him for eight months.

14 Abu-Ali minimizes the sexual contact
15 between himself and Mr. Collins but the hospital records
16 actually suggest otherwise. This was the time about when
17 he was arrested and charged with atrocious assault and
18 battery following an incident with a cab driver. When he
19 assaulted this man with the knife, the cab driver was
20 hospitalized.

21 Abu-Ali was initially put into a honor
22 camp and when they tried to find a record of Abu-Ali,
23 they couldn't and confronted him with this he broke down
24 in tears and is placed in Annandale in '66.

25 This was a very frightening experience for

1 him. This is the first time he was ever in an
2 institution where he experienced pretty wide scale
3 homosexuality.

4 He would stand in showers and feel finger
5 running down his buttocks. He would turn around and they
6 openly asked him for sexual favors. This is where he had
7 the homosexual panic. He was put on suicide watch. He
8 made a suicide attempt via hanging.

9 He told me he half meant it and half meant
10 to the get out of this place. He got transferred to the
11 Trenton State Hospital in 1967, in February.

12 He found this to be even worse than
13 Annandale because there were so many homosexual favors
14 being asked of him. He said at the time he was very a
15 feminine looking male. His father ridiculed him a lot
16 about looking like a girl. This was a very difficult
17 situation for him. He had some therapy there.

18 MR. BAKER: Your Honor, I would like to
19 object. There is a question but we are just getting a
20 narrative of what the records say.

21 MR. MACLEAN: Your Honor, the question was
22 give us the story of his life, which I think mitigation
23 is all about.

24 MR. BAKER: I think if she is called and
25 she has an expert opinion, I think we need to get to

1 that.

2 THE COURT: I think, Mr. MacLean, if you
3 want to ask her her opinion and you want her to target
4 some of this to that, that would be helpful. This is in
5 evidence.

6 As she is talking, I have been through 27
7 pages of it. I don't mind a summary but I do think Mr.
8 Baker's point about let's get a question on the table is
9 a reasonable one.

10 Q. Dr. McCoy, we were at -- you got up to the point
11 in Annandale. What was the result of his experience in
12 Annandale?

13 A. The ultimate result is that eventually he was
14 discharged from here. He was diagnosed sociopathic
15 personality disturbance and antisocial reaction. That is
16 Trenton Hospital.

17 He was discharged from Annandale in May,
18 '67 and returned to live with his parents in Philadelphia
19 for a period of time.

20 Things were bad at home. He ended up
21 living on the streets until being arrested at age 17 and
22 being charged with being drunk and disorderly.

23 Q. What happened in his life after that?

24 A. After that he joined the Army.

25 Q. What was the nature of his experience in the

1 Army?

2 A. He had a very difficult time adjusting to the
3 Army, not surprisingly. He reports while in the stockade
4 he reports making suicide attempts. He was eventually
5 discharged. He was diagnosed antisocial personality. It
6 was concluded he was unsuitable for military duty because
7 his problem -- there was not a medical treatment.

8 The day after this discharge, he was
9 arrested along with three others and charged with armed
10 robbery of a soldier and another series of evaluations
11 followed, one by Dr. Fitzpatrick who determined, I
12 believe, he was sane and competent.

13 The court wasn't satisfied with that and
14 had him evaluated again. Actually the United States
15 Attorney's Office who had him evaluated again because he
16 slashed his wrist with a razor. And then tore the
17 bandages off the wound and attempted to hang himself with
18 the bandages.

19 MR. BAKER: I object again. It seems like
20 we are doing the same thing.

21 MR. MACLEAN: I am sorry.

22 Q. It was while he was at Petersburg that the Stein
23 incident occurred in 1972, is that correct?

24 A. Yes.

25 MR. MACLEAN: All right. This is somewhat

1 important. I would like at this point -- I know these
2 exhibits are already included in the documents that the
3 state produced. But I wanted to separate these, and
4 there are some additional exhibits in this group.

5 These are the records pertaining to the
6 period of time from December of 1970 through the
7 investigation of the Stein killing plus a letter written
8 in February of 1974.

9 I would like to introduce this as a
10 collective exhibit at this time.

11 THE COURT: What is your best guess as to
12 the number?

13 MR. MACLEAN: I can tell you exactly.

14 THE COURT: 142?

15 MR. MACLEAN: 142.

16 THE COURT: Any objection?

17 MR. BAKER: No objection.

18 THE COURT: All right.

19 Q. Dr. McCoy, let me ask you to look at those. Tell
20 the Court whether those are most, if not all, of the
21 records from the federal prison records relating to the
22 events leading up to the Stein incident not including the
23 court proceedings which are already in evidence?

24 A. Okay. Yes, these are the events leading up and
25 then there is one, a letter regarding Ramilla Stein's

1 claim.

2 Q. Now, based upon your review of the records, what
3 were the circumstances surrounding the Stein killing?

4 MR. BAKER: I object to the that. The
5 report will speak for itself. If she is going to give
6 psychological testimony, we can hear it.

7 THE COURT: Let's have her give an
8 opinion, if that is the what she is going to do.
9 Otherwise she wasn't a witness.

10 MR. MACLEAN: Your Honor, we have got two
11 pressures going on here. Number one, we want to
12 demonstrate for the Court and the record what the
13 mitigation case would be at trial in the sentencing
14 hearing. We also are very sensitive to the Court's
15 time.

16 I think in a real sentencing hearing
17 before a jury, we would take the time to go through all
18 this and we would have someone relate all this to the
19 jury which I believe is permitted under the statute.

20 So, we want to make a record and make sure
21 that the record shows what the proof would be at a
22 sentencing hearing. It will probably take longer than we
23 will take here. I just want to make that statement for
24 the record.

25 THE COURT: Are you suggesting at a

1 sentencing hearing you would call witnesses to summarize
2 documents that they have no personal knowledge about?

3 MR. MACLEAN: Yes, Your Honor. I think
4 the statute specifically provides for that.

5 MR. BAKER: We would disagree with that.
6 I mean, that is what attorneys do in argument in front of
7 the jury. I think arguing from the facts and evidence
8 presented -- in other words, with the rules of
9 evidence -- what we are asking is that let's get on with
10 that here.

11 The Court has the records and the
12 attorneys can make their arguments and the Court can draw
13 its conclusion from those records.

14 I would like to move on. I think we have
15 talked enough about the background. She has given the
16 background. Let's get onto the psychological issues.

17 THE COURT: I think a brief summary of
18 these -- particularly since she has prepared this is
19 constructive for her opinion.

20 MR. REDICK: Judge, if I could be heard?

21 THE COURT: Underline brief. Otherwise
22 let's just of her start at tab one and read until we get
23 to the end. That is certainly not a good use of time.

24 Mr. Redick.

25 MR. REDICK: Your Honor, I think there is

1 a misunderstanding here about why this witness is being
2 offered.

3 THE COURT: Okay.

4 MR. REDICK: She formed some opinions and
5 she is qualified to offer opinions but also a social
6 historian.

7 There is no question about the fact that
8 this type testimony can be offered in a sentencing
9 hearing in Tennessee state courts and would have been
10 offered and would have been admissible in 1987.

11 THE COURT: Can you cite me some authority
12 that the rule of evidence of personal knowledge doesn't
13 apply in a death penalty case?

14 MR. REDICK: Your Honor, the rules of
15 evidence do not apply in a capital sentencing. As a
16 matter of fact, hearsay is admissible in capital
17 sentencing hearings. A capital sentencing hearing --

18 THE COURT: That's right, Mr. Baker?

19 MR. BAKER: My understanding is that the
20 rules can be relaxed but the Court still has the
21 discretion, and when you talk about witnesses testifying
22 not from personal knowledge but to review a document,
23 essentially that is like the attorneys sitting in the
24 chair and giving arguments.

25 I don't think the courts allow that.

1 MR. REDICK: Could I read the statute?

2 THE COURT: Sure. It will be helpful to
3 me.

4 You say the rules don't apply. Mr. Baker
5 says they do. That's a pretty dramatic disagreement.
6 Educate me.

7 MR. REDICK: This is the TCA section 3913
8 204 C. In the sentencing proceeding evidence may be
9 presented as any matter that the court deems relevant to
10 the --

11 THE COURT: Slow down. You are ruining
12 your own record.

13 MR. REDICK: In sentencing proceedings
14 evidence may be presented as any matter that the court
15 deems relevant to the punishment, may include but not be
16 limited to the nature and circumstances of the crime, the
17 defendant's character, background history, and physical
18 condition.

19 Any evidence tending to establish or rebut
20 the aggravating circumstances are enumerated in
21 subsection I, and any evidence attempting to establish or
22 rebut mitigating factors. Any such evidence that the
23 court deems to have probative value on punishment may be
24 received regardless, providing that the defendant is
25 accorded a fair opportunity to rebut any hearsay

1 statements so admitted.

2 THE COURT: That says it all. Rules of
3 evidence don't apply. I mean, in the federal sentencing
4 the rules of evidence don't apply.

5 Mr. Baker.

6 MR. BAKER: Your Honor, I don't believe
7 when it says the rules are relaxed, the Court still has,
8 as it says, as to be probative value. There is no
9 probative value to simply having the witness read
10 documents and interpret the document.

11 MR. REDICK: This is exactly what defense
12 attorneys are obligated to do in sentencing hearings, is
13 tell the story of the defendant's life.

14 THE COURT: I understand that. Mr. Baker
15 is not disputing that. The dispute is whether you can
16 call one witness and just wind her up and read everything
17 or whether you have to call people with personal
18 knowledge.

19 MR. BAKER: Can the state call witnesses
20 that -- the courts don't do that, Your Honor. You can
21 call witnesses and they may give history but we don't go
22 with a long narrative.

23 THE COURT: Mr. Redick.

24 MR. REDICK: I agree with that. Witnesses
25 are to respond to questions. But there is nothing wrong

1 with a social historian describing the history of the
2 defendant.

3 In a capital sentencing hearing there
4 would be many witnesses that would be called to testify
5 and in a properly presented defense in mitigation and
6 sentencing, there would be a social historian that wraps
7 it up and summarizes and brings whole to the parts that
8 have been presented by various witnesses.

9 This in itself is a truncated version of
10 what a capital sentencing hearing is. This is
11 abbreviated and the state is now trying to get us to
12 abbreviate this.

13 We don't want to bore the Court or
14 unnecessarily take up the Court's time.

15 I think it is important to establish --
16 this is a very, very significant factor in terms of how
17 capital sentencing hearings are presented. United States
18 Supreme Court has been clear time after time after time
19 in cases like Locky (ph) versus Ohio and Skipper versus
20 South Carolina and Hushion (ph) versus Florida, and case
21 after case that the jury can't be precluded from
22 considering anything in medication.

23 This would be lay testimony -- expert
24 testimony and is not limited by the rules of evidence.

25 MR. MACLEAN: Your Honor, if I may add --

1 and I don't want to double team Mr. Baker -- but I want
2 to make a point, two related points.

3 The first point is that the statute does
4 not say that the rule shall be relaxed. The statute I
5 believe says that --

6 THE COURT: It says it doesn't apply.
7 Here is my ruling.

8 Without regard to what may be admissible
9 in state court, under Federal Rules of Evidence, Rule
10 1006, contents of voluminous writings, recordings, or
11 photographs which can't conveniently be examined in court
12 may be presented in the form of a chart, summary or
13 calculation. Originals, or duplicates, shall be made
14 available for examination or copying, or both, at
15 reasonable time and place. The Court may order that they
16 be produced in court.

17 So, under Rule 1006, I am going to allow
18 this witness to present a summary.

19 MR. BAKER: She hasn't done that in
20 writing. I don't know if we simply need to -- it seems
21 like it could be abbreviated.

22 THE COURT: A summary is a summary and I
23 will ask you to have this witness briefly go into each of
24 these categories and all the documents that are itemized
25 there are in the record. I think a brief summary is

1 helpful.

2 I will allow this particular document and
3 her testimony to be admitted under 1006.

4 I think a brief recitation of the summary
5 is helpful.

6 If you want her to form an opinion you,
7 will have to ask her a question.

8 MR. MACLEAN: I understand that.

9 THE COURT: Let's get on with it.

10 MR. MACLEAN: I do appreciate the Court's
11 concern about time. We simply want to make our position
12 clear on what we consider --

13 THE COURT: I know what you are doing.
14 You are trying it to the Sixth Circuit.

15 Frankly, I am offended by. I get the
16 first shot at it. Otherwise why would you want to read
17 all this in the record. It is going to be in the
18 record.

19 I will let you build your record.

20 Let's get on with it. It is 4:30.

21 BY MR. MACLEAN: (Continuing)

22 Q. Dr. McCoy, very briefly go through the rest of the
23 highlights of the social history and try to be as brief
24 as you can while hitting the main points.

25 A. Okay. The '72 incident involving Stein,

1 apparently this had to do with a homosexual issue of the
2 victim and several others in which is called the D.C.
3 group spreading rumors about Abu-Ali being homosexual.
4 And the homicide occurred as a result of this issue.

5 There are lots of corroboration on the
6 record, and I have listed that here from various people,
7 his brother's memos and what not describing the
8 situation.

9 Summarize is such a relative concept. I
10 don't know exactly.

11 He was convicted of second degree murder
12 and he said his response to that is that he was broken
13 and gun shy and he basically just gave up and he became
14 what he called a punk. That is a black figure of speech
15 for a man halfway between a human and homosexual.

16 He would wear makeup and extra large
17 T-shirts to look like a dress and got performing sexual
18 favors on other inmates and this characterized his life
19 until he went to prison.

20 He was under a lot of sexual pressure of
21 playing the woman's role in the prison.

22 He carried knives. He explained to me for
23 protection. He sometimes avoided work detail because
24 there were people there that represented a threat to him.
25 Prison, of course, is an unusual circumstance. It calls

1 for unusual behavior from people.

2 That is why the DSM 4 has kind of a
3 disclaimer about diagnosing someone antisocial
4 personality disorder based upon their behavior in certain
5 circumstances.

6 I will quote it. It says concerns have
7 been raised that the diagnosis may at times be misapplied
8 to individuals in settings in which seemingly antisocial
9 behavior may be part of a protective survival strategy.

10 Q. Just briefly go and outline the basic time line of
11 Abu-Ali's life and I will ask you some opinions about
12 this?

13 A. Well, he moved around to several different
14 prisons. I have these summarizing the institutional
15 records at the end of the social history.

16 He finally made it to Colorado. He was
17 shy a few weeks of -- to shot yourself in the foot, he
18 escaped. He did get recaptured with the incident
19 involving "catch the bear" when he was fingerprinted.

20 He was finally institutionalized in a
21 Chicago prison and released, and had a pretty stable year
22 or two before finding his way to Nashville.

23 I think this is an important period of his
24 life. Because it is the time closest to the homicide of
25 Patrick Daniels.

1 He is out of prison and we see a person
2 who for the most part is not getting in trouble except
3 one shoplifting incident; working two jobs and his
4 employer describes him as a very conscientious employee
5 that supervises others, he has a relationship with a
6 woman, a Quaker women who helps him with his transition
7 period of his life.

8 She breaks her engagement with him because
9 her friend says he acts crazy and strange.

10 He finds his way to Clarksville and he
11 sees his family that he hasn't seen for many years.

12 This period in Chicago, he was working
13 very hard to be a part of mainstream America, be a part
14 of the all American dream.

15 Q. Now, from the time he was incarcerated in 1969
16 when he was 18 years old, I believe until released in
17 Chicago in December of 1983, he had been incarcerated the
18 entire time except that period of a couple months when he
19 escaped to South Dakota?

20 A. Yes.

21 Q. From December, 1983, when he was released in
22 Chicago until February 19, 1967, little more than two
23 years later, what was his record like during that
24 two-year period which would be the only two years of his
25 adult life out in the free world?

1 A. As I said, he was working in Chicago and had two
2 jobs. He was working for a cleaning service where he was
3 very well thought of. The employer had him as a
4 supervisor.

5 He did comment that something very odd
6 about Abu-Ali, he would see him just gazing out windows.

7 He had a girlfriend. He lived on his own,
8 had his own apartment and then went to Clarksville and
9 that didn't work out.

10 The parol situation didn't work out
11 because fell felons not allowed on a military base. He
12 was given a choice between Chicago and Nashville and he
13 ended up in Nashville and at Opportunity House.

14 He chanted and was singing loudly and
15 then toward the end of his day after he met another woman
16 and found a job at the Publishing House, his behavior
17 dropped out and he started settling down and doing much
18 better.

19 Q. Dr. McCoy, have you diagnosed Abu-Ali?

20 A. Yes.

21 Q. What diagnosis have you given Abu-Ali?

22 A. I believe he has a post traumatic stress disorder
23 which is a common diagnosis for the kind of physical
24 abuse he had.

25 And with his obsession with this and

1 sensitivity to this, I also believe he warrants a
2 primary diagnosis of borderline personality disorder.

3 Certainly he has other characteristics of
4 other personality disorders as well.

5 Q. Would you diagnose him as an antisocial
6 personality disorder?

7 A. I think he has traits. Again, I think that
8 looking at the prison records and making a diagnosis
9 based on that is misleading because that is a particular
10 situation where antisocial behavior is required to
11 survive, and I think when you look closely at the record
12 there are explanations given for his behavior there.

13 I think toward the end, too, I saw memos
14 in his chart about the fact the last three years or so of
15 his institutionalization that his behavior had improved
16 quite a bit.

17 Q. Dr. McCoy, have you been able to reach an opinion
18 on the nature of the stresses that were affecting Abu-Ali
19 during the period leading up to the homicide in this
20 case?

21 A. Yes.

22 Q. Will you give your opinions to the Court on that?

23 A. The period of time leading up to the homicide
24 was a very stressful period. He had another woman to
25 whom he was engaged that broke the engagement. He had

1 met up with Susi Bynum and in retrospect married her on
2 the rebound. He really wanted children more than
3 anything. He had hopes she would give birth to the
4 Messiah.

5 The relationship in the marriage did not
6 go very well.

7 She was very -- Susi wanted a normal
8 sexual life. Abu-Ali didn't meet her needs. He had a
9 difficulty reaching a climax.

10 She had become very suspicious have him
11 and he likewise was suspicious of her. As the gap
12 between the two of them widened, he became much more
13 invested in the activities of the SEGM.

14 As he described it to me, he became,
15 quote, unquote, wedded to the SEGM and spending as much
16 time on these activities as he could.

17 He was using marijuana to ease the tension
18 in the marriage, using LSD at night to stay awake while
19 out on scouting missions with the SEGM.

20 I think in reference to that offering, it
21 really fulfilled a niche he had gone looking for all his
22 life. He felt important, he felt respected, he felt he
23 had a function. He was a part of something vitally
24 important that would affect his people.

25 Q. Dr. McCoy, at the time of the homicide was Abu-Ali

1 overcome by the emotions of the situation?

2 Was he in a highly emotional, disturbed
3 state in your opinion?

4 A. Yes, in my opinion, he was.

5 Q. Please explain why you reached that opinion?

6 A. I think because of his background the way he was
7 raised, the feelings he had about his upbringing, about
8 his parents, when he was in that apartment and saw the
9 situation with the children, when he saw Devalle Miller
10 starting to become unraveled and feared what would
11 happen, I think he not only identified with the children
12 and animals but he really saw the two adults present
13 really as his mother and father.

14 He talked to me a lot about the extent
15 to which the victim reminded him of these men
16 beginning with his father and men who raped him in
17 prison that persecuted him all his life and the women
18 were like his mother that disregarded the safety of her
19 children.

20 Q. Dr. McCoy, during Abu-Ali's early life, his
21 developmental years, in your opinion did he have any
22 place where he could turn for comfort or safety or
23 refuge?

24 A. About the only thing I am aware of is he would go
25 to the woods and he considered the animals his allies and

1 friends, and the people that I talked to -- that is Susi
2 Bynum confirmed and records reflect his affinity with
3 animals.

4 Q. Do you have any disagreement with the opinions of
5 Dr. Sadoff in this case?

6 A. No, I don't.

7 MR. MACLEAN: Thank you.

8 THE COURT: All right. Mr. Baker.

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EXAMINATION OF DIANA MCCOY

BY MR. BAKER:

Q. Dr. McCoy, you talked about the petitioner's background.

Were you aware he was expelled from school for threatening a teacher with a knife?

A. Yes.

Q. You are aware that he was Court marshalled for assaulting another military member with a knife?

A. Yes.

Q. Are you aware of his prior criminal convictions?

A. Yes. This is all in my social history.

Q. Are you aware in the prisons that he had been caught repeatedly with contraband, knives?

A. I mentioned that.

Q. That he had been written up in reports for lying to officers?

A. Yes.

Q. That he had been in trouble for violent behavior and fighting?

A. Yes.

Q. You know about the Stein murder in '72, another stabbing?

A. I made a thorough review of the prison records.

Q. And you are familiar about the incident in South

1 Dakota?

2 A. Yes.

3 Q. Where there was a murder?

4 A. Yes.

5 Q. And this defendant wiped the scene clean from
6 fingerprints?

7 A. I understood he was involved in that.

8 I understand there is a problem with his
9 credibility. I don't know all the details of that.

10 Q. Of course, you are aware of the murder in this
11 case and assault with a knife?

12 A. Yes.

13 Q. A stabbing.

14 You also agree with Dr. Sadoff that if the
15 facts were not as petitioner stated then your opinion is
16 suspect?

17 A. Yes.

18 Q. That is all, Your Honor.

19 THE COURT: All right. Any redirect?

20 MR. MACLEAN: Yes.

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EXAMINATION OF DIANA MCCOY

BY MR. MACLEAN:

Q. First of all, Abu-Ali was never court marshalled, was he?

A. I am afraid I am not up on my military terminology. He had a problem and he was discharged.

Q. He went through disciplinary proceedings but it wasn't a court marshal?

A. I don't know.

Q. Dr. McCoy, in your opinion should Abu-Ali's background beginning with his early history and family background and continuing through to the point of the offense, should that have been presented to the jury in this case in mitigation?

MR. BAKER: Objection. That is going beyond the scope. He is asking her to make a legal opinion.

THE COURT: I think the way the question was phrased, it is objectionable. But I believe it can be rephrased and based upon her experience in working with juries.

Q. Based upon your experience in working with jurors and in working in capital cases as a mitigation expert, is Abu-Ali's social history as you set forth in here and you summarized in your report information that in your

1 opinion should have been presented to the jury in the
2 sentencing hearing?

3 A. Yes. In my opinion in the 20 or so cases I have
4 done, it is one of the most compelling social histories
5 that I have encountered and one of the saddest stories,
6 and I think one of the most graphic in explaining this
7 individual's development and behavior that I have
8 encountered.

9 MR. MACLEAN: Thank you.

10 THE COURT: Anything else of this
11 witness?

12 MR. BAKER: Nothing further, Your Honor.

13 THE COURT: Thank you. You may step
14 down.

15 Mr. Baker, are you going to call a
16 witness?

17 MR. BAKER: No, Your Honor.

18 THE COURT: Does that conclude what we
19 have wanted to do today in terms of testimony?

20 MR. MACLEAN: Yes, Your Honor.

21 THE COURT: What I will call the
22 psychological, personal history component?

23 MR. MACLEAN: Yes, Your Honor.

24 THE COURT: That means Dr. Sadoff is not
25 going to be recalled, is that right?